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TITLE 3—THE PRESIDENT

EXECUTIVE ORDER 10765

REGULATIONS GOVERNING THE AWARD OF LIFE-SAVING MEDALS UNDER THE MEDALS OF HONOR ACT

By virtue of authority vested in me by the Medals of Honor Act, 33 Stat. 743, as amended by the act of June 13, 1957, 71 Stat. 69 (45 U. S. C. 44 *et seq.*), and as President of the United States, it is hereby ordered as follows:

1. The following regulations shall govern the award of life-saving medals under the said Medals of Honor Act, as amended, and shall constitute §§ 9.1 through 9.7 of Chapter I of Title 49 of the Code of Federal Regulations:

§ 9.1 *Applications and affidavits.* Applications for medals under the Medals of Honor Act, 33 Stat. 743, as amended by the act of June 13, 1957, 71 Stat. 69 (45 U. S. C. 44 *et seq.*), shall be prepared in accordance with, and contain the information called for in, the form of application prescribed by the Interstate Commerce Commission consistent with these regulations, or any instructions which may be issued by the Commission with respect to the filing of an application. Applications should be addressed to and filed with the Interstate Commerce Commission, Washington, D. C. The acts relied upon in the application must be of such a nature that the applicant would not be expected or required to perform such acts in performing the duties of his regular work or vocation. Satisfactory evidence of the facts upon which the application is based must be filed in each case. Such evidence should be in the form of affidavits made by witnesses of good repute and standing, testifying of their own knowledge. The affidavits should be made before an officer duly authorized to administer oaths, and should be accompanied by the certificate of a United States official of the district in which the affiants reside, such as a judge or clerk of a United States court, a district attorney, or a postmaster, to the effect that the affiants are reputable and credible persons. If the affidavits are taken be-

fore an officer without an official seal, his official character must be certified by the proper officer of a court of record under the seal thereof.

§ 9.2 *Character of evidence.* The expression by a witness, or witnesses, of the opinion that the person for whom an award is sought acted with extreme daring and endangered his life is not sufficient basis for an award, but the affidavits or testimony should set forth the pertinent facts in detail, and show clearly in what manner and to what extent the life of the applicant was endangered and extreme daring manifested by him. The affidavits or testimony should also state the name of the city, town, or village in or near which the incident occurred, the railroad, public highway, road, or street, and the place thereon where the incident occurred, the date, time of day, and condition of the weather, the names and addresses of (1) the carrier or carriers, or person or persons, involved, (2) the police, fire, or other public officials who investigated the incident, and (3) all persons present, when practicable, and any other pertinent circumstances. These regulations shall not be construed as applicable to any motor-vehicle incident with respect to which no part of the directly related events takes place on a public highway, road, or street.

§ 9.3 *Investigation by Commission.* In addition to considering applications filed with it, the Interstate Commerce Commission may, upon its own motion, initiate proceedings for award of medals under the Medals of Honor Act and cause investigations to be made. Sworn testimony of witnesses taken before an officer or employee of the Commission designated by the Commission for the purpose of taking such testimony shall become a part of the record in the case.

§ 9.4 *Review of evidence; recommendations.* Applications for medals, together with all affidavits, testimony, and other evidence received in connection therewith, and the records developed in connection with investigations initiated by the Commission, shall be referred to a committee of three persons, consisting

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(As of January 1, 1958)

The following Supplements are now available:

Title 7, Parts 900 to 959 (\$1.00)

Titles 22-23, Rev. Jan. 1, 1958 (\$4.25)

Titles 28-29 (\$1.50)

Previously announced: Title 3, 1957 Supp. (\$0.40); Titles 4-5 (\$1.00); Title 8, Rev. Jan. 1, 1958 (\$3.25); Title 9 (\$0.75); Titles 10-13 (\$1.00); Title 17 (\$0.65); Title 18 (\$0.50); Title 20 (\$1.00); Titles 30-31 (\$1.50); Title 32, Parts 700-799 (\$0.60), Part 1100 to end (\$0.50); Titles 35-37 (\$1.00); Title 39 (\$0.60); Titles 40-42 (\$1.00); Title 43 (\$0.70); Title 46, Parts 1-145 (\$0.75), Parts 146-149, Rev. Jan. 1, 1958 (\$5.50); Title 49, Part 165 to end (\$0.75)

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direct any inspector in the employ of the Commission to proceed to the locality where the act or acts in question were performed and to make a personal investigation of the matter, and to make a report upon the facts of the case. Such report shall be filed and shall be made a part of the evidence to be considered. In any case in which the Commission recommends that an award be made posthumously, its recommendation shall designate the relative or other person to whom the medal should be presented.

§ 9.5 *Recommendation effective as directed by the Secretary of Commerce, acting for the President.* Upon approval of the recommendation in any case by the Secretary of Commerce, acting for the President, the award of the medal shall be made by the Chairman of the Interstate Commerce Commission in the name and on behalf of the President.

§ 9.6 *Preparation of designs; approval by the Secretary of Commerce, acting for the President.* The Commission shall cause designs to be prepared for the medal, rosette, and ribbon provided for

by the act, and such designs shall be submitted to, and become effective when approved by, the Secretary of Commerce, acting for the President.

§ 9.7 *Time limits for filing.* No application for a medal shall be considered unless it is filed within two years from the date of the occurrence of the incident upon which it is based: *Provided*, that no application based solely upon an incident involving a motor vehicle shall be considered in any event if the incident occurred prior to June 13, 1957.

2. This order shall become effective upon publication thereof in the FEDERAL REGISTER, and shall thereupon supersede the regulations which were approved by the President on June 21, 1926, and which now constitute §§ 9.1 through 9.6 of Chapter I of Title 49 of the Code of Federal Regulations.

DWIGHT D. EISENHOWER

THE WHITE HOUSE,
April 24, 1958.

[F. R. Doc. 58-3192; Filed, Apr. 25, 1958; 11:26 a. m.]

RULES AND REGULATIONS

TITLE 7—AGRICULTURE

Chapter VIII—Commodity Stabilization Service (Sugar), Department of Agriculture

Subchapter B—Sugar Requirements and Quotas
[Sugar Reg. 811, Amdt. 1]

PART 811—CONTINENTAL SUGAR REQUIREMENTS AND AREA QUOTAS, 1958

DETERMINATION AND PRORATION OF QUOTA DEFICITS

Basis and purpose. This amendment is issued pursuant to the Sugar Act of 1948, as amended, hereinafter called the "act" for the purpose of determining and prorating deficits in the quotas for Hawaii and Puerto Rico for sugar to be marketed in the continental United States in 1958.

Section 204 (a) of the act provides that the Secretary shall from time to time determine whether any area will be unable to market its quota and prescribes the manner in which any deficit in a quota for a domestic area or Cuba is to be prorated to other such areas able to supply the additional sugar. Such section provides that any deficit in any domestic producing area occurring by reason of inability to market that part of the quota for such area allotted under the provisions of section 202 (a) (2) of the act, shall first be prorated to other domestic areas on the basis of the quotas then in effect, and the remainder of such deficit to be prorated to other domestic areas and Cuba on the basis of quotas then in effect.

The act also provides that the quota for any area as established under the provisions of section 202 shall not be reduced by reason of any determination of a deficit.

In order to afford sellers of sugar in affected areas an adequate opportunity to plan marketings and to market the additional sugar authorized by this amendment, and thereby protect the interest of consumers, it is essential that this amendment be made effective immediately. Therefore, it is hereby determined and found that compliance with the notice, procedure and effective date requirements of the Administrative Procedure Act is unnecessary, impracticable and contrary to the public interest and the amendment herein shall become effective when published in the FEDERAL REGISTER.

By virtue of the authority vested in the Secretary of Agriculture by the Sugar Act of 1948, as amended (61 Stat. 922, as amended) and the Administrative Procedure Act (60 Stat. 237) Sugar Regulation 811 is hereby amended by adding § 811.4 as follows:

§ 811.4 *Determination and proration of area deficits and adjusted quotas—(a) Deficit in quotas established in § 811.2.* It is hereby determined, pursuant to subsection (a) of section 204 of the act, that for the calendar year 1958, Hawaii and Puerto Rico will be unable by 100,000 and 200,000 short tons, raw value, of sugar, respectively, to market the quotas established for such areas in § 811.2.

(b) *Quotas in effect upon proration of deficits in parts of quotas established pursuant to section 202 (a) (2).* The part of the deficits determined in paragraph (a) of this section applicable to that portion of the quotas in § 811.2 established pursuant to the provisions of section 202 (a) (2) of the act, which amounts to 47,643 short tons, raw value, is hereby prorated on the basis of the quotas established in § 811.2 to domestic areas to the extent each such area is able

of the Secretary of the Commission and two Commission staff officials designated by the Chairman of the Commission. One of such staff officials shall be directly concerned with railroad safety, and the other with motor-carrier safety. The committee shall carefully consider each application or record, and after thoroughly weighing the evidence shall prepare an abstract or brief covering the case, and file it, together with the committee's recommendation, with the Commission for consideration. After due consideration, the Commission shall transmit its recommendation, together with a statement of the facts in the case, to the Secretary of Commerce, acting for the President, for his consideration. The Commission, or the committee with the approval of the Commission, may

to supply additional quantities. The quotas for such areas in effect upon publication of this paragraph in the **FEDERAL REGISTER** shall be those established in § 811.2 plus the quantities prorated herein, as follows:

[Short tons, raw value]

Area	Prorated herein	Quotas including prorations herein
Domestic beet sugar.....	26,432	1,945,620
Mainland cane sugar.....	11,211	598,687
Hawaii.....	0	1,065,513
Puerto Rico.....	0	1,114,130
Virgin Islands.....	0	15,193

(c) *Quotas in effect upon prororation of deficits in part of quotas otherwise established.* Immediately after the quotas established in paragraph (b) of this section become effective, the quantity by which the deficit determined in paragraph (a) of this section exceeds the quantity prorated in paragraph (b) of this section, which amounts to 252,357 short tons, raw value, is hereby prorated on the basis of the quotas in effect pursuant to paragraph (b) of this section for domestic areas and pursuant to § 811.3 for Cuba, to the domestic areas able to supply additional sugar and Cuba. Thereupon, the following quotas shall be in effect, such quotas consisting of those established in paragraph (b) of this section for domestic areas and in § 811.3 for Cuba plus the quantities prorated in this paragraph:

[Short tons, raw value]

Area	Prorated herein	Quotas including prorations herein and in paragraph (b) of this section
Domestic beet sugar.....	89,492	2,035,112
Mainland cane sugar.....	27,538	626,225
Hawaii.....	0	1,065,513
Puerto Rico.....	0	1,114,130
Virgin Islands.....	0	15,193
Cuba.....	135,327	3,077,442

Quotas for foreign countries other than Cuba remain as established in § 811.3.

STATEMENT OF BASES AND CONSIDERATIONS

Although the processing of sugarcane in Puerto Rico will not be completed until late June, the industry in its recent estimate forecast production of sugar this year at 1,000,000 tons. Thus, it is evident that the supply of sugar will be inadequate to fill the 1958 mainland and local quotas for Puerto Rico by at least 200,000 tons.

Sugar production in Hawaii has been stopped by strike since the first of February. The duration of the strike cannot be forecast. However, in view of the capacity limitations of processing facilities and the likelihood that there will be some deterioration of the sugarcane to be processed, it is evident that the supply of Hawaiian sugar will be inadequate to fill its 1958 mainland and local quotas by at least 100,000 tons. It is expected that the determination of additional deficits will be necessary if the strike continues

and when more definite information becomes available.

Due to drought conditions the Virgin Islands will not have a sufficient supply of sugar to participate in filling any part of the deficits herein determined. Accordingly, deficits of 100,000 and 200,000 short tons, raw value, in the mainland quotas for Hawaii and Puerto Rico, respectively, are hereby determined, and pursuant to section 204 (a) of the act, 47,643 tons are prorated to domestic areas able to market additional sugar on the basis of the quotas for such areas as established in S. R. 811 (22 F. R. 10732), and 252,357 tons are prorated to such domestic areas and Cuba on the basis of the quotas in effect after prororation of the 47,643 tons.

These actions are taken on the basis of tentative information while the Cuban harvest is in progress to enable that country to make any appropriate adjustments in its production.

(Sec. 403, 61 Stat. 932; 7 U. S. C. 1153. Interpret or applies secs. 202, 204; 61 Stat. 924, 925; 7 U. S. C. 1112, 1114)

Done at Washington, D. C., this 23d day of April 1958.

[SEAL]

TRUE D. MORSE,
Acting Secretary.

[F. R. Doc. 58-3135; Filed, Apr. 25, 1958; 8:53 a. m.]

Chapter IX—Agricultural Marketing Service (Marketing Agreements and Orders), Department of Agriculture

[Valencia Orange Reg. 133]

PART 922—VALENCIA ORANGES GROWN IN ARIZONA AND DESIGNATED PART OF CALIFORNIA

LIMITATION OF HANDLING

§ 922.433 *Valencia Orange Regulation 133—(a) Findings.* (1) Pursuant to the marketing agreement and Order No. 22, as amended (7 CFR Part 922), regulating the handling of Valencia oranges grown in Arizona and designated part of California, effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U. S. C. 601 et seq.; 68 Stat. 906, 1047), and upon the basis of the recommendations and information submitted by the Valencia Orange Administrative Committee, established under the said marketing agreement and order, as amended, and upon other available information, it is hereby found that the limitation of handling of such Valencia oranges as hereinafter provided will tend to effectuate the declared policy of the act.

(2) It is hereby further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rule-making procedure, and postpone the effective date of this section until 30 days after publication hereof in the **FEDERAL REGISTER** (60 Stat. 237; 5 U. S. C. 1001 et seq.) because the time intervening between the date when information upon which this section is based became available and the time when this section must be-

come effective in order to effectuate the declared policy of the act is insufficient, and a reasonable time is permitted, under the circumstances, for preparation for such effective time; and good cause exists for making the provisions hereof effective as hereinafter set forth. The committee held an open meeting during the current week after giving due notice thereof, to consider supply and market conditions for Valencia oranges and the need for regulation; interested persons were afforded an opportunity to submit information and views at this meeting; the recommendation and supporting information for regulation during the period specified herein were promptly submitted to the Department after such meeting was held; the provisions of this section, including its effective time, are identical with the aforesaid recommendation of the committee, and information concerning such provisions and effective time has been disseminated among handlers of such Valencia oranges; it is necessary, in order to effectuate the declared policy of the act, to make this section effective during the period herein specified; and compliance with this section will not require any special preparation on the part of persons subject hereto which cannot be completed on or before the effective date hereof. Such committee meeting was held on April 24, 1958.

(b) *Order.* (1) The respective quantities of Valencia oranges grown in Arizona and designated part of California which may be handled during the period beginning at 12:01 a. m., P. s. t., April 27, 1958, and ending at 12:01 a. m., P. s. t., May 4, 1958, are hereby fixed as follows:

- (i) District 1: 554,400 carloads;
- (ii) District 2: 231,000 carloads;
- (iii) District 3: Unlimited movement.

(2) All Valencia oranges handled during the period specified in this section are subject also to all applicable size restrictions which are in effect pursuant to this part during such period.

(3) As used in this section, "handler," "handler," "District 1," "District 2," "District 3," and "carton" have the same meaning as when used in said marketing agreement and order, as amended.

(Sec. 5, 49 Stat. 753, as amended; 7 U. S. C. 608c)

Dated: April 25, 1958.

[SEAL]

S. R. SMITH,
Director, Fruit and Vegetable
Division, Agricultural Mar-
keting Service.

[F. R. Doc. 58-3190; Filed, Apr. 25, 1958; 11:21 a. m.]

[Lemon Reg. 735, Amdt. 1]

PART 953—LEMONS GROWN IN CALIFORNIA AND ARIZONA

LIMITATION OF HANDLING

Findings. 1. Pursuant to the marketing agreement, as amended, and Order No. 53, as amended (7 CFR Part 953), regulating the handling of lemons grown in California and Arizona, effective under the applicable provisions of the Agricultural Marketing Agreement

Act of 1937, as amended (7 U. S. C. 601 et seq.; 68 Stat. 906, 1047), and upon the basis of the recommendation and information submitted by the Lemon Administrative Committee, established under the said amended marketing agreement and order, and upon other available information, it is hereby found that the limitation of handling of such lemons as hereinafter provided will tend to effectuate the declared policy of the act.

2. It is hereby further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rule-making procedure, and postpone the effective date of this amendment until 30 days after publication hereof in the *FEDERAL REGISTER* (60 Stat. 237; 5 U. S. C. 1001 et seq.) because the time intervening between the date when information upon which this amendment is based became available and the time when this amendment must become effective in order to effectuate the declared policy of the Agricultural Marketing Agreement Act of 1937, as amended, is insufficient, and this amendment relieves restriction on the handling of lemons grown in California and Arizona.

Order, as amended. The provisions in paragraph (b) (1) (ii) of § 953.842 (Lemon Regulation 735; 23 F. R. 2588) are hereby amended to read as follows:

(ii) District 2: 274,350 cartons.

(Sec. 5, 49 Stat. 753, as amended; 7 U. S. C. 608c)

Dated: April 23, 1958.

[SEAL] S. R. SMITH,
Director, Fruit and Vegetable
Division, Agricultural Market-
ing Service.

[F. R. Doc. 58-3132; Filed, Apr. 25, 1958;
8:52 a. m.]

[Lemon Reg. 736]

PART 953—LEMONS GROWN IN CALIFORNIA AND ARIZONA

LIMITATION OF HANDLING

§ 953.843 *Lemon Regulation 736—(a) Findings.* (1) Pursuant to the marketing agreement, as amended, and Order No. 53, as amended (7 CFR Part 953), regulating the handling of lemons grown in California and Arizona, effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U. S. C. 601 et seq.; 68 Stat. 906, 1047), and upon the basis of the recommendation and information submitted by the Lemon Administrative Committee, established under the said amended marketing agreement and order, and upon other available information, it is hereby found that the limitation of handling of such lemons as hereinafter provided will tend to effectuate the declared policy of the act.

(2) It is hereby further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rule-making procedure, and postpone the effective date of this section until 30 days after publication hereof in the *FEDERAL REGISTER* (60 Stat. 237; 5 U. S. C. 1001 et seq.) because

the time intervening between the date when information upon which this section is based became available and the time when this section must become effective in order to effectuate the declared policy of the act is insufficient, and a reasonable time is permitted, under the circumstances, for preparation for such effective time; and good cause exists for making the provisions hereof effective as hereinafter set forth. The Committee held an open meeting during the current week, after giving due notice thereof, to consider supply and market conditions for lemons and the need for regulation; interested persons were afforded an opportunity to submit information and views at this meeting; the recommendation and supporting information for regulation during the period specified herein were promptly submitted to the Department after such meeting was held; the provisions of this section, including its effective time, are identical with the aforesaid recommendation of the committee, and information concerning such provisions and effective time has been disseminated among handlers of such lemons; it is necessary, in order to effectuate the declared policy of the act, to make this section effective during the period herein specified; and compliance with this section will not require any special preparation on the part of persons subject hereto which cannot be completed on or before the effective date hereof. Such committee meeting was held on April 23, 1958.

(b) Order. (1) The respective quantities of lemons grown in California and Arizona which may be handled during the period beginning at 12:01 a. m., P. s. t., April 27, 1958, and ending at 12:01 a. m., P. s. t., May 4, 1958, are hereby fixed as follows:

- (i) District 1: Unlimited movement;
 - (ii) District 2: 372,000 cartons;
 - (iii) District 3: Unlimited movement.
- (2) As used in this section, "handled," "District 1," "District 2," "District 3," and "carton" have the same meaning as when used in the said amended marketing agreement and order.

(Sec. 5, 49 Stat. 753, as amended; 7 U. S. C. 608c)

Dated: April 24, 1958.

[SEAL] S. R. SMITH,
Director, Fruit and Vegetable
Division, Agricultural Mar-
keting Service.

[F. R. Doc. 58-3172; Filed, Apr. 25, 1958;
8:57 a. m.]

Chapter XI—Agricultural Conserva- tion Program Service, Department of Agriculture

[ACP-1958-Hawaii, Supp. 1]

PART 1105—AGRICULTURAL CONSERVATION; HAWAII

SUBPART—1958

MISCELLANEOUS AMENDMENTS

Constructing or sealing dams, pits, or ponds for livestock water, including the enlargement of inadequate structures; constructing or sealing dams, pits, or

ponds for irrigation water; lining ditches in reorganization of farm irrigation system to conserve water and prevent erosion.

Pursuant to the authority vested in the Secretary of Agriculture under sections 7-17 of the Soil Conservation and Domestic Allotment Act, as amended, and the Department of Agriculture and Farm Credit Administration Appropriation Act, 1958, the 1958 Agricultural Conservation Program for Hawaii, approved October 21, 1957 (22 F. R. 8349), is amended as follows:

1. In § 1105.756, part (e) of the maximum Federal cost-share paragraph is revised to read as follows:

(e) 50 percent of the cost of materials, other than concrete and rubble masonry, including soil sealing, and including installation costs.

2. In § 1105.757, part (f) of the maximum Federal cost-share paragraph is revised to read as follows:

(f) 50 percent of the cost of materials, other than concrete and rubble masonry, including soil sealing, and including installation costs.

3. In § 1105.759, part (a) of the maximum Federal cost-share paragraph is revised to read as follows:

(a) 50 percent of the cost of materials, other than concrete and rubble masonry, including soil sealing, and including installation costs.

(Sec. 4, 49 Stat. 164, as amended; 16 U. S. C. 590d. Interpret or apply secs. 7-17, 49 Stat. 1148, as amended, 71 Stat. 329; 16 U. S. C. 590g-590q)

Done at Washington, D. C., this 23d day of April 1958.

[SEAL] E. L. PETERSON,
Assistant Secretary.

[F. R. Doc. 58-3131; Filed, Apr. 25, 1958;
8:52 a. m.]

TITLE 8—ALIENS AND NATIONALITY

Chapter I—Immigration and Natural- ization Service, Department of Justice

ALIEN CREWMAN IDENTIFICATION CARDS AND WAIVERS

The following amendments to Chapter I of Title 8 of the Code of Federal Regulations are hereby prescribed:

PART 242—PROCEEDINGS TO DETERMINE DEPORTABILITY OF ALIENS IN THE UNITED STATES: APPREHENSION, CUSTODY, HEAR- ING, AND APPEAL

Section 242.7a is added to read as follows:

§ 242.7a *Waiver of documents; returning residents.* Pursuant to the authority contained in section 211 (b) of the act, an alien previously lawfully admitted to the United States for permanent residence who, upon return from a temporary absence of less than one year in a country or countries of the Western Hemisphere, was excludable because of failure to have or to present a valid passport, immigrant visa, reentry permit, border crossing card, or other document

required at the time of entry, may be granted a waiver of such requirement in the discretion of the district director, or in deportation proceedings in the discretion of the special inquiry officer: *Provided*, That such alien (a) was not otherwise excludable at the time of entry, or (b) having been otherwise excludable at the time of entry is with respect thereto qualified for an exemption from deportability under section 7 of the act of September 11, 1957, and (c) is not otherwise subject to deportation. Denial of a waiver by the district director shall not be appealable but shall be without prejudice to renewal of an application and reconsideration in proceedings before a special inquiry officer.

PART 251—ARRIVAL MANIFESTS AND LISTS; SUPPORTING DOCUMENTS

1. Paragraph (b) of § 251.1 *Arrival manifests and lists* is amended to read as follows:

(b) *Additional documents.* The master or agent of every vessel or aircraft arriving in the United States from a foreign port or place, from an outlying possession of the United States, or from Hawaii, Alaska, Guam, Puerto Rico, or the Virgin Islands of the United States shall prepare as a part of the manifest when one is required for presentation to the immigration officer, a completely executed set of Forms I-95 for each alien crewman on board, except (1) an alien immigrant crewman in possession of a valid immigrant visa, reentry permit, or alien registration receipt card on Form I-151; (2) a Canadian or British citizen crewman of a Great Lakes vessel; or (3) a crewman seeking conditional landing privileges under section 252 (a) (1) of the act who is in possession of an unutilized alien crewman landing permit and identification card (Form I-184) or an unutilized conditional landing permit (Form I-95) with space for additional endorsements previously issued to him as a member of the crew of the same vessel or an aircraft of the same line on his last prior arrival in the United States, following which he departed from the United States as a member of the crew of the same vessel or an aircraft of the same line.

2. Section 251.3 *Notification of changes in crew* is amended by adding a paragraph (c) to read as follows:

(c) *No changes in crew.* When there are no changes in crew the master or agent of every vessel departing from the United States shall submit to the immigration officer at the port from which such vessel is to depart directly to a foreign port or place an executed Form I-418 bearing the notation "Arrival crewlist filed at _____. No changes in crew upon departure."

PART 252—LANDING OF ALIEN CREWMEN

Part 252 is amended to read as follows:

Sec.
252.1 Examination of crewmen.
252.2 Revocation of conditional landing permits; deportation.

Sec.
252.3 Great Lakes vessels; special procedures.
252.4 Permanent landing permit and identification.

AUTHORITY: §§ 252.1 to 252.4 issued under sec. 103, 66 Stat. 173; 8 U. S. C. 1103. Interpret or apply secs. 214, 248, 251, 252, 66 Stat. 189, 218, 219, 220; 8 U. S. C. 1184, 1258, 1281, 1282.

§ 252.1 *Examination of crewmen—*
(a) *Detention prior to examination.* All persons employed in any capacity on board any vessel or aircraft arriving in the United States shall be detained on board the vessel or at the airport of arrival by the master or agent of such vessel or aircraft until admitted or otherwise permitted to land by an officer of the Service.

(b) *Classes of aliens subject to examination under this part.* The examination of every alien crewman arriving in the United States shall be in accordance with this part and not otherwise except that the following classes of persons employed on vessels or aircraft shall be examined in accordance with the provisions of Parts 235, 236, and 237 of this chapter: (1) Aliens in possession of an immigrant visa, reentry permit, or a Form I-151 alien registration receipt card, applying for admission as immigrants; (2) Canadian or British citizen crewmen of Great Lakes vessels; or (3) Canadian or British citizen crewmen of aircraft arriving directly in Alaska or the continental United States on flights originating in Canada.

(c) *Requirements for admission.* Every alien crewman applying for landing privileges in the United States must make his application in person before an immigration officer, present whatever documents are required, and establish to the satisfaction of the immigration officer that he is not subject to exclusion under any provision of the law and is entitled clearly and beyond doubt to landing privileges in the United States.

(d) *Authorization to land.* The immigration officer in his discretion may grant an alien crewman authorization to land temporarily in the United States for (1) shore leave purposes during the period of time the vessel or aircraft is in port of arrival or other ports in the United States to which it proceeds directly without touching at a foreign port or place, not exceeding twenty-nine days in the aggregate, if the immigration officer is satisfied that the crewman intends to depart on the vessel on which he arrived or on another aircraft of the same transportation line, or (2) the purpose of departing from the United States as a crewman on a vessel other than the one on which he arrived, or departing as a passenger by means of other transportation, within a period of twenty-nine days, if the immigration officer is satisfied that the crewman intends to depart in that manner, that definite arrangements for such departure have been made, and the immigration officer has consented to the pay off or discharge of the crewman from the vessel on which he arrived.

(e) *Conditional permits to land.* Unless the crewman is in possession of Form I-184 and is landed under paragraph (d) (1) of this section, the immigration officer shall give to each alien nonimmigrant crewman permitted to land a copy of the Form I-95 presented by the crewman, endorsed to show the date and place of admission and the type of conditional landing permit.

(f) *Change of status.* An alien nonimmigrant crewman landed pursuant to the provisions of this part shall be ineligible for any extension of stay beyond twenty-nine days or for a change of nonimmigrant classification under Part 248 of this chapter. A crewman admitted under paragraph (d) (1) of this section, may, if still maintaining status, apply for a conditional landing permit under paragraph (d) (2) of this section and, upon approval of such application, shall be given a copy of a new Form I-95 endorsed to show landing authorized under paragraph (d) (2) of this section for the balance of the remaining twenty-nine days. He shall surrender any conditional landing permit previously issued to him on Form I-95.

§ 252.2 *Revocation of conditional landing permits; deportation.* An alien permitted to land conditionally under § 252.1 (d) (1) may, within the period of time for which he was permitted to land, be taken into custody by any immigration officer without a warrant of arrest and be transferred to the vessel upon which he arrived in the United States, if such vessel is in any port of the United States and has not been in a foreign port or place since the crewman was issued his conditional landing permit, upon a determination by the immigration officer that the alien crewman is not a bona fide crewman or that he does not intend to depart on the vessel on which he arrived in the United States. The conditional landing permit of such an alien crewman shall be taken up and revoked by the immigration officer and a notice to detain and deport such alien crewman shall be served on the master of the vessel on Form I-259. On the written request of the master of the vessel, the crewman may be detained and deported, both at the expense of the transportation line on whose vessel he arrived in the United States, other than on the vessel on which he arrived in the United States, if detention or deportation on such latter vessel is impractical.

§ 252.3 *Great Lakes vessels; special procedures.* An immigration examination shall not be required of any crewman aboard a Great Lakes vessel arriving at a port of the United States for a period of less than twenty-four hours, who (a) has previously been examined by an immigration officer as a member of the crew of the same vessel and (b) is either a British or Canadian citizen or is in possession of a Form I-95 previously issued to him as a member of the crew of the same vessel during the same calendar year, and (c) does not request or require landing privileges in the United States during the time the vessel will be in ports of the United States before returning to Canada.

§ 252.4 *Permanent landing permit and identification card.* An alien crewman who seeks to land temporarily in the United States as provided in § 252.1 (d) (1) and who desires a permanent type landing permit and identification card, which will be valid indefinitely for an unlimited number of such conditional landings without endorsement on each arrival, may apply on Form I-174 to the immigration officer for such a credential. The applicant shall be photographed and fingerprinted. Upon establishing his status to the satisfaction of an immigration officer, a laminated Form I-184 landing permit and identification card may be issued to him. A Form I-184 shall be valid until such time as it may be revoked. On revocation it shall be surrendered to an immigration officer. No appeal shall lie from a denial of an application for, or the revocation of, a landing permit on Form I-184.

PART 299—IMMIGRATION FORMS

Section 299.1 *Prescribed forms* is amended by adding the following forms in numerical sequence:

Form No.; Title and Description

- I-174 Application for crewman's landing permit.
I-184 Alien crewman landing permit and identification card.

(Sec. 103, 66 Stat. 173; 8 U. S. C. 1103)

This order shall become effective on the date of its publication in the *FEDERAL REGISTER*. Compliance with the provisions of section 4 of the Administrative Procedure Act (60 Stat. 238; 5 U. S. C. 1003) as to notice of proposed rule making and delayed effective date is unnecessary in this instance because the rules prescribed by the order relate to agency procedure and confer benefits upon persons affected thereby.

Dated: April 23, 1958.

J. M. SWING,
Commissioner of
Immigration and Naturalization.

[F. R. Doc. 58-3137; Filed, Apr. 25, 1958; 8:54 a. m.]

TITLE 13—BUSINESS CREDIT AND ASSISTANCE

Chapter II—Small Business Administration

[Amdt. 3]

PART 101—LOAN POLICY STATEMENT DISASTER LOANS

The Loan Policy Statement issued by the Loan Policy Board of the Small Business Administration (21 F. R. 5044), as amended 23 F. R. 213, 2213, is hereby further amended by deleting § 101.5 in its entirety and substituting in lieu thereof the following:

§ 101.5 *Disaster loans.* (a) Disaster loans will be considered on an individual basis in the light of circumstances of the applicant and of the particular flood, drought, excessive rainfall or other catastrophe. Such loans will be made

to relieve the distress and hardships attendant upon the disasters.

(b) Interest on the Small Business Administration share of disaster direct and participation loans shall be at the rate of 3 percent per annum, except that where a disaster loan is made for the acquisition or construction (including acquisition of site therefor) of housing for the personal occupancy of the Borrower, the interest rate on both Small Business Administration's share and bank's share of such loan shall be at the rate of 3 percent per annum.

(c) In agreements to participate in disaster loans on a deferred basis, such participation by the Small Business Administration shall not be in excess of 90 percent of the balance of the loan outstanding at the time of disbursement.

(d) In deferred participation loans to disaster victims in which the interest rate on the Bank's portion thereof is fixed at 3 percent per annum, no participation charge shall be made on the portion of such loans which the Small Business Administration is obligated to purchase. In deferred participation loans to such victims in which the interest rate on Bank's portion of the loan exceeds 3 percent per annum, Bank shall pay to Small Business Administration a participation charge of 1/4 percent per annum on that portion of the loan which the Small Business Administration is obligated to purchase, which charge shall not be reimbursable by Borrower. (Sec. 205, 67 Stat. 234, as amended; 15 U. S. C. 634)

Dated: April 11, 1958.

SMALL BUSINESS ADMINISTRATION,
LOAN POLICY BOARD,
WENDELL B. BARNES,
Chairman.

[F. R. Doc. 58-3118; Filed, Apr. 25, 1958; 8:40 a. m.]

TITLE 14—CIVIL AVIATION

Chapter I—Civil Aeronautics Board

Subchapter A—Civil Air Regulations [Supp. 37]

PART 4b—AIRPLANE AIRWORTHINESS; TRANSPORT CATEGORIES

MISCELLANEOUS AMENDMENTS

This supplement establishes new policies in §§ 4b.362-1 through 4b.362-7 pertaining to flight crew emergency exits, the emergency exits in the passenger compartment of the airplane, the step-down distance from exits, acceptable compensating factors when increasing the number of passengers, approved descent means, exit markings and access to the exits; in § 4b.375-1 for an acceptable method for showing compliance with a warning indication to indicate when the safe or preset limits in pressure differential and absolute cabin pressures are exceeded, and in § 4b.634-1 for acceptable maximum limits for overlap intensities of forward position lights having a peak intensity greater than 100 candles.

In addition, this supplement deletes from § 4b.337-4 the provision for a warn-

ing indication to the pilot when the anti-skid device has malfunctioned and clarifies the test procedure for fire resistant electrical equipment in § 4b.626-1.

The following are hereby adopted:

- Section 4b.337-4 (b) (2) (ii) is deleted.
- The following sections are added to read:

§ 4b.362-1 *Flight crew emergency exits (CAA policies which apply to § 4b.362 (a)).* (a) A flight crew area emergency exit should be a minimum of 19" x 20" unobstructed rectangular opening; however, other size and shape minimums will also be acceptable providing a demonstration of exit utility, using typical flight crew personnel, is satisfactorily demonstrated to the administrator.

(b) The provisions of § 4b.362 (e) (2) through (8) and (f) are also applicable to flight crew emergency exits. When the internal exit "opening means" involve sequence operations, operation of two handles or latches, release of safety catches, etc., such means will be acceptable for flight crew exits when it can be reasonably established that the means will be "simple and obvious" to crew members trained in their use.

§ 4b.362-2 *Step-down distance (CAA interpretation which applies to § 4b.362 (b)).* The step-down distances specified in § 4b.362 (b) (2), (3), and (4) mean the actual distances between the bottom of the required openings and a useable foothold which extends out from the fuselage and is large enough to be effective without searching visually or by feel.

§ 4b.362-3 *Number of passengers (CAA policies which apply to § 4b.362 (c)).* (a) Cabin attendants are considered part of the crew and are not included in the passenger seating capacity § 4b.362 (c) (1).

(b) The following compensatory factor in emergency evacuation means will be acceptable for an increase in the passenger seating capacity beyond the limits specified in § 4b.362 (c) (1).

(1) The installation of an approved inflatable slide at each floor level exit, other than over the wing exits, is acceptable for:

(i) An increase of no more than 5 passengers on airplanes having at least 2 such exits; or

(ii) An increase of no more than 10 passengers on airplanes having at least 4 such exits.

§ 4b.362-4 *Emergency exit design descent means¹ (CAA policies which apply to § 4b.362 (e) (7)).* (a) The assist device required for crew exits may be a rope or any other device demonstrated to be suitable for the purpose. If a rope is provided, it should be attached to the

¹ Consideration should be given to such factors affecting the utility of Type III and Type IV exits as weight, ease of handling, provision of hand holds, stowage space, adequacy of instructions, etc. A side hinged or external opening exit would not be as critical from the weight standpoint as one removed inwardly which must be moved an appreciable distance to clear the exit approach.

fuselage structure at or above the upper limit of the exit opening. The rope and attachment should be capable of withstanding a 400 lb. static load.

(b) When required by § 4b.362 (e) (7) at floor level passenger exits, the approved means may be an inflatable slide, a non-inflatable slide, or any other device approved by CAA as suitable for the purpose. Ropes or ladders will not be approved as descent means for use at floor level passenger exits.

§ 4b.362-5 *Emergency exit marking (CAA policies which apply to § 4b.362 (f)).* (a) Exits in excess of the number required by the table in § 4b.362 (c) (1), need not be marked as emergency exits, but if so marked, such exits must meet all requirements of § 4b.362 for the particular type.

(b) Emergency exits used solely for emergency evacuation of the aircraft should be marked "Emergency Exit." Emergency exits customarily used in entering or leaving the airplane need only be marked with the word "Exit." In either case, the marking should be in red or in another color which provides adequate contrast where red might be ineffective against the cabin color scheme.

(c) Opening instructions when not on the exit should be immediately beside the exit and no special effort should be required by a person having 20/20 vision to read these instructions. Readability should be evaluated under representative day and emergency night lighting conditions.

§ 4b.362-6 *Emergency exit access (CAA policies which apply to § 4b.362 (g)).* (a) Attendant seating facilities³ should not normally result in any reduction in required aisle widths, passageways between compartments, or the minimum 20" passageway leading to Types I and II exits. Attendant seating facilities provided with any acceptable means of clearing the passageway immediately is not considered as being an obstruction to these passageways. An acceptable means of demonstrating compliance would be a spring loaded attendant seat which provides automatic retraction when the seat is vacated. Unless the seat is aft facing, the seat should also be equipped with a shoulder harness.

(b) When it is required that there be an area adjacent to an exit to permit a crew member to assist passengers in the use of escape devices, a 12" x 20" area with the long dimension parallel to and clear of the required 20" exit approach passageway or equivalent facility should be provided. The area should be adequate to permit an attendant to stand erect and to perform needed assist services in the evacuation of passengers.

(c) Projection of the seat backs into the minimum required exit opening may be permitted only if the seat back can be pushed forward or aft to clear the opening with the seat occupied. The force

required to push the seat back away from the opening should be as low as practicable and should not exceed a maximum of 35 pounds with the seat unoccupied. The action should not require operation of any mechanical release. A clear opening should permit the required minimum exit shape to be projected inward past the seat bottom and back cushion. Minor protrusion of the seat upholstery is acceptable if it does not interfere with exit removal and if it would be compressed without special effort by the person(s) using the exit.

(d) Arm rests, curtains, or other protrusions should not restrict the required minimum opening unless they are removed simultaneously with opening of the exit.

(e) Berth installations, whether or not made up, should not decrease the accessibility and utility of emergency exits.

§ 4b.362-7 *Width of main aisle (CAA policies which apply to § 4b.362 (h)).* In determining compliance with aisle width requirements in an airplane so arranged that passengers face the aisle, the minimum aisle should be considered to begin at a point 12" forward of the leading edge of each seat.

3. A new § 4b.375-1 is added to read:

§ 4b.375-1 *Warning indication (CAA policies which apply to § 4b.375 (f)).*—(a) *Cabin pressure differential warning.* Because of the protection provided by the required duplication of pressure relief valves, appropriate warning markings on the cabin pressure differential indicator will meet the requirement for a warning indication to the pilot or flight engineer when the safe or preset cabin pressure differential limits are exceeded.

(b) *Cabin absolute pressure warning.* An aural or visual signal in addition to cabin altitude indicating means will meet the requirements for a warning indication to the pilot or flight engineer when the cabin absolute pressure is reduced below that equivalent to 10,000 feet.

4. Section 4b.626-1, published 22 F. R. 6885, August 27, 1957, is revised to read:

§ 4b.626-1 *Fire resistant electrical equipment* (CAA policies which apply to § 4b.626). When applied to the electrical equipment and components defined in the last sentence of § 4b.626, an accepted criterion for "fire resistant" is that such equipment and components, as installed in the aircraft, should withstand a 2,000° F. oxidizing flame impinging on their surfaces for at least five minutes without adverse effect on their circuit function.⁴ The 2,000° F. oxidizing

³ This policy establishes a basic test standard for fire resistant electrical equipment located in designated fire zones. However, installation approval may be granted for equipment which does not conform to this standard, if it can be shown that such equipment would provide equivalent safety if exposed to the probable fire conditions at its particular location.

⁴ Excessive temperature may affect the electrical equipment and components by causing such malfunctions as short circuit, open circuit, and changes in circuit parameters (for example, reduced insulation resistance and dielectric strength).

flame should envelop the equipment under test, using a test setup simulating the actual aircraft installation.⁵ Thermocouples for measurement of flame temperature should be located within one-fourth inch of the surface exposed to the flame.

5. A new § 4b.634-1 is added to read:

§ 4b.634-1 *Overlaps between high intensity forward position lights (CAA policies which apply to § 4b.634 (b) (3)).* When the peak intensity of the forward position lights is greater than 100 candles, the maximum overlap intensities between them may exceed the values given in Figure 4b-20 provided the overlap intensity in Area A is not greater than 10 percent of peak position light intensity and the overlap intensity in Area B is not greater than 2.5 percent of peak position light intensity.⁶

This supplement shall become effective May 5, 1958.

(Sec. 205, 52 Stat. 984; 49 U. S. C. 425. Interpret or apply secs. 601, 603, 52 Stat. 1007, as amended, 1009, as amended; 49 U. S. C. 551, 553)

WILLIAM B. DAVIS,
Acting Administrator of
Civil Aeronautics.

APRIL 21, 1958.

[F. R. Doc. 58-3101; Filed, Apr. 25, 1958; 8:46 a. m.]

PART 49—TRANSPORTATION OF EXPLOSIVES AND OTHER DANGEROUS ARTICLES

Regulations governing the air transportation of explosives were originally promulgated in 1942 and expanded to cover "other dangerous articles" in 1944. These rules were amended in 1949 by the promulgation of a revised Part 49 to permit the carriage of additional articles as the experience gained by operators had shown that they were capable of handling a greater variety of these materials with safety. The safety standards used were the then current Interstate Commerce Commission Regulations applicable to shipments by rail express since this type of shipment closely approximated conditions met in air transportation. These requirements were more conservative and provided a greater margin of safety than were required for other means of transportation.

In 1949, Appendices A and B were added which listed those articles prohibited from transportation by air and those articles prohibited from transportation on passenger-carrying aircraft, respectively. The articles listed in Appendix A were derived from those which were not acceptable under the ICC Regulations for shipment by rail express. The articles listed in Appendix B were derived from those which were not exempt from the packing, marking, and

⁵ In the case of electric cable only a representative length, not less than 12 inches, need to be enveloped in the flame.

⁶ Overlap intensities should be determined with the position lights installed in their actual airplane locations, since adjacent airplane structure will often provide some cut-off in the overlap area.

³ Under such seating arrangements, particular attention should be directed to compliance with § 4b.360 (c) to protect the attendant from incapacitation by aircraft or galley equipment.

labeling requirements of the ICC Regulations for shipment by rail express. In promulgating Part 49, the Board envisioned that the commodities listed in the appendices would be examined periodically on the basis of information furnished by the Bureau of Explosives, changes in the ICC Regulations, and such other data as became available. On the basis of information furnished by the Bureau of Explosives, the ICC Regulations have been amended quarterly. However, the appendices of Part 49 have not been amended since they were adopted in 1949. In order to insure that Part 49, without further amendment, will be continuously in accord with the ICC Regulations as they are amended from time to time, this revision contains references to the appropriate ICC Regulations and the appendices have been deleted. However, it should be emphasized that the Board's close working relationship with the Bureau of Explosives, the Interstate Commerce Commission, the Civil Aeronautics Administration, and other organizations expert in this field will be continued.

The special authority provisions of present Part 49 authorize the Administrator to permit deviations from this part for a particular flight in emergency situations, or where other forms of transportation are impracticable, where he finds that the conditions under which the articles are to be carried are such as to permit the safe carriage of persons or cargo. This revision is similar except that the Administrator may impose such terms, conditions, and limitations as he finds necessary in the interest of safety in air commerce. This change gives discretion to the Administrator to impose conditions, such as prior approval of the management of the airport of intended landing, as are necessary to insure a safe operation.

Present Part 49, as amended by Amendment 49-2, refers to Board action on December 27, 1954, approving, under Section 412 of the Civil Aeronautics Act, International Air Transport Association Traffic Conference Resolution 608 (as amended) with respect to shippers' certification and labeling requirements. Subsequent action was taken by the Board on June 15 and December 16, 1955, approving the IATA Resolutions which contain "IATA Regulations Relating to the Carriage of Restricted Articles." Labels approved by this subsequent Board action have been accepted by the ICC and are presently approved for use by the ICC Regulations. Accordingly, reference to the IATA labels has been deleted. While either the pictorial or nonpictorial label as contained in the ICC Regulations is acceptable to the United States, Canada, and Mexico for both domestic and international air shipments, only the pictorial label is acceptable to other countries as a result of the IATA Resolution. Therefore, while this part continues to permit the use of either label, it may facilitate the international air movement of commodities covered under Part 49 if the pictorial label is initially affixed to such commodities.

This part, by referencing the ICC Regulations, automatically requires the marking of proper shipping names as shown in Part 72 of the ICC Regulations. The names of restricted articles listed in the IATA Tariff are not always identical with the proper shipping names in the ICC Regulations. Therefore, to facilitate international air movement of these articles, a note has been added to § 49.11 which permits additional parenthetical identification of such articles.

Technically, some of the materials carried to be dispensed during aerial application operations are not permitted to be carried in air transportation under current Part 49. In order to correct this situation, a new section is being added which will exempt these materials when carried during actual aerial application operations.

Under present Part 49 notification to the pilot of the loading of dangerous goods on board his aircraft may be made by entering the required information on the load manifest. It has been brought to our attention that in many instances this procedure is not adequate, as often the pilot is not aware that articles subject to the provisions of Part 49 have been loaded aboard his aircraft. Accordingly, the appropriate section has been reworded in this revision to assure that the pilot in command is cognizant of such shipments and their location aboard the aircraft.

The carriage of nitrocellulose base film and pyroxylin plastics in passenger and cargo operations is permitted under currently effective Part 49. The carriage of this film is predicated upon its being packed, marked, and labeled in accordance with the requirements of the ICC Regulations. In Civil Air Regulations Draft Release No. 56-23 it was proposed that such articles be prohibited from shipment in air commerce. The comments received indicate that there is a continuing need to permit the shipment of this film in air transportation, and that it has been carried for many years under the present provisions without incident. Information received from the Bureau of Explosives indicates that there have been no incidents of a fire of this film other than old and worn-out or scrap material. In view of the above, certain film will continue to be permitted to be shipped in both passenger-carrying and cargo aircraft subject to the packing, marking, and labeling requirements contained in the ICC Regulations for such film. With respect to pyroxylin plastics in sheets, rolls, rods, or tubes, experience in the shipment of these products over the past years has indicated that these articles may be shipped safely in passenger-carrying and cargo aircraft in accordance with the specifications in the ICC Regulations. Additionally, the Bureau of Explosives has advised that these materials will not heat spontaneously under conditions normal to transportation. Accordingly, the shipment of these articles will continue to be permitted in air commerce.

Present Part 49 permits flammable liquids to be carried in quantities of not more than one quart in inside metal

containers or in quantities of not more than one pint in inside glass or earthenware containers, and permits acids and other corrosive liquids in bottles of not more than one pint and Class B poisonous liquids in quantities of not more than one pint in glass containers or not more than one quart in metal containers. By referencing the ICC Regulations, this revision eliminates the present requirements in Part 49 which prescribe the type of inside container so that other adequate containers may be used as provided in the ICC Regulations. Provision is also made so that quantities up to a total net capacity of one quart may be packed in any one strong outside container. While no provision is made in the part, multiple outside containers meeting the requirements of this part may be consolidated in a suitable manner for ease of handling and shipping. If this is accomplished in an additional container, this container or package would not be interpreted to be "an outside container."

Part 49 presently permits the carriage of most nonflammable compressed gases. However, there are seven such gases which, according to expert opinion, should continue to be prohibited in passenger-carrying operations. This revision continues such a prohibition.

While safety matches (strike-on-the-box type) are presently listed by Part 49 as flammable solids and are required to be packed in tightly closed metal containers in quantities of not more than 25 pounds in strong outside containers, these articles are not presently subject to ICC regulation and, accordingly, are not regulated under this revision.

In addition to the comments received in response to Draft Release 56-23 (21 F. R. 6574), extensive discussions have been held with representatives of the Civil Aeronautics Administration, the Interstate Commerce Commission, the Bureau of Explosives, industry associations, and other interested persons, and due consideration has been given to all relevant matter presented.

In consideration of the foregoing, the Civil Aeronautics Board hereby revises Part 49 of the Civil Air Regulations (14 CFR Part 49, as amended) as follows, effective June 25, 1958:

APPLICABILITY AND DEFINITIONS

- | | |
|------|-----------------------------|
| Sec. | |
| 49.1 | Applicability of this part. |
| 49.2 | Special authority. |
| 49.5 | Definitions. |

SHIPPING REQUIREMENTS

- | | |
|-------|-----------------------------------|
| 49.11 | Packing and marking requirements. |
| 49.12 | Labeling requirements. |
| 49.13 | Certification requirements. |
| 49.14 | Quantity equivalents. |
| 49.15 | Containers for liquids. |

LOADING AND HANDLING REQUIREMENTS

- | | |
|-------|---|
| 49.21 | Cargo location. |
| 49.22 | Notification of pilot in command. |
| 49.23 | Damaged articles. |
| 49.24 | Quantity limitations. |
| 49.25 | Special requirements for radioactive materials. |

PASSENGER-CARRYING AIRCRAFT

- | | |
|-------|---|
| 49.31 | Articles which may be carried on passenger-carrying aircraft. |
|-------|---|

CARGO AIRCRAFT

Sec.
49.41 Articles which may be carried on cargo aircraft.

AUTHORITY: §§ 49.1 to 49.41 issued under sec. 205, 52 Stat. 984, as amended; 49 U. S. C. 425. Interpret or apply secs. 601, 902, 52 Stat. 1007, as amended, 1015, as amended; 49 U. S. C. 551, 622.

APPLICABILITY AND DEFINITIONS

§ 49.1 *Applicability of this part.* (a) Explosives and other dangerous articles, as defined and regulated in Parts 72 through 78 of the ICC Regulations (49 CFR Parts 72 through 78) including but not limited to flammable liquids, flammable solids, oxidizing materials, corrosive liquids, compressed gases, and poisonous articles shall not be loaded in or transported by civil aircraft in the United States, or transported anywhere in air commerce in civil aircraft of United States registry, except as hereinafter provided.

(b) Explosives and other dangerous articles listed in Part 72 of the ICC Regulations (49 CFR Part 72) as articles not accepted for rail express shall not be loaded in or transported by civil aircraft in the United States or transported anywhere in air commerce in civil aircraft of United States registry.

(c) The provisions of this part shall not be applicable to radioactive materials meeting the requirements of Parts 72 and 73 of the ICC Regulations (49 CFR Parts 72, 73) which exempt them from the prescribed packing, marking, and labeling requirements thereof for shipment by rail express.

(d) The provisions of this part shall not be applicable to aircraft equipment such as signaling devices, aviation fuel and oil carried in tanks complying with the fuel and oil tanks installation provisions for the Civil Air Regulations, and other equipment and materials necessary for the safe operation of the aircraft on which they are carried.

(e) The provisions of this part shall not be applicable to materials while carried in the hoppers or tanks of aircraft certificated for use in aerial seeding, dusting, spraying, fertilizing, crop improvement, or pest control and which are to be dispensed during such operations.

NOTE: In addition to other authorized sanctions, section 902 of Title IX of the Civil Aeronautics Act of 1938, as amended (52 Stat. 1015, as amended; 49 U. S. C. 622), provides that any person who knowingly delivers or causes to be delivered to an air carrier or to the operator of any civil aircraft for transportation in air commerce, or who causes the transportation in air commerce of, any shipment, baggage, or property, the transportation of which is prohibited by any rule, regulation, or requirement prescribed by the Civil Aeronautics Board, pursuant to authority under Title VI of the Civil Aeronautics Act of 1938, as amended, relating to the transportation, packing, marking, or description of explosives or other dangerous articles shall, upon conviction thereof for each such offense, be subject to the applicable penalties set forth therein.

§ 49.2 *Special authority.* (a) In emergency situations or where other forms of transportation are impracticable:

(1) Deviation from any of the provisions of this part for a particular flight may be authorized by the Administrator subject to such terms, conditions, and limitations as he finds necessary in the interest of safety in air commerce.

(2) Shipments made by the Atomic Energy Commission shall be exempt from the quantity limitation prescribed for radioactive materials in the ICC Regulations for shipment by rail express provided such shipments are otherwise in accordance with the requirements approved by the Interstate Commerce Commission for shipment by rail express and prior notification of each shipment is given by the Atomic Energy Commission in the form and manner prescribed by the Administrator.

(b) Shipments of radioactive materials made by the Atomic Energy Commission or under its direction or supervision, which are escorted by personnel who are especially designated by the Atomic Energy Commission, shall be exempt from the provisions of this part where special arrangements are made with and approved by the Administrator.

§ 49.5 *Definitions.* As used in this part, terms are defined as follows:

Cargo aircraft. A cargo aircraft is an aircraft which is not a passenger-carrying aircraft and which is used for the carriage of goods.

Explosives and other dangerous articles. (As defined in Part 73 of the ICC Regulations (49 CFR Part 73)):

Acids and other corrosive liquids.
Compressed gases.
Explosives.
Flammable liquids.
Flammable solids.
Oxidizing materials.
Poisonous articles.

ICC Regulations. ICC Regulations are the currently effective "Interstate Commerce Commission's Regulations for Transportation of Explosives and Other Dangerous Articles," as amended or revised from time to time (49 CFR Parts 71-78).

NOTE: These ICC Regulations may be obtained from the Government Printing Office, Washington 25, D. C., or from the Bureau of Explosives, 30 Vesey Street, New York 7, New York.

Labeling. Labeling is the display on a container of the appropriate label specified in the ICC Regulations for the particular class of article.

Marking. Marking is the display on the outside of a container of the name of the article inside as required by this part.

Operator of aircraft. Operator of aircraft is any person who causes or authorizes the operation of any civil aircraft, whether with or without the right of legal control (in the capacity of owner, lessee, or otherwise) of such aircraft.

Passenger-carrying aircraft. A passenger-carrying aircraft is an aircraft carrying any individual other than a flight crew or crew member, company employee, or an authorized Government representative, or individuals accompanying shipments.

Person. Person is any individual, firm, copartnership, corporation, company, association, joint-stock association, or body

politic; and includes any trustee, receiver, assignee, or other similar representative thereof.

Pilot in command. The pilot in command is the pilot responsible for the operation and safety of the aircraft during the time defined as flight time.

Quantity. Quantity is that net amount specified in United States liquid measure or in avoirdupois weight, unless otherwise provided in this part.

Unit of radiation. As defined in Part 73 of the ICC Regulations (49 CFR Part 73).

SHIPPING REQUIREMENTS

§ 49.11 *Packing and marking requirements.* Unless otherwise specifically provided in this part, explosives and other dangerous articles shall be packed and marked in accordance with the requirements prescribed in Parts 72, 73, and 78 of the ICC Regulations (49 CFR Parts 72, 73, 78) as are applicable to rail express.

NOTE: The marking required by this provision may be followed by additional identification in parentheses.

§ 49.12 *Labeling requirements.* Unless otherwise specifically provided in this part, explosives and other dangerous articles acceptable under the provisions of this part for transportation in air commerce shall be labeled by the shipper with the appropriate label specified in the ICC Regulations even though they may be exempt from ICC labeling requirements by virtue of ICC quantity and packing limitations.

§ 49.13 *Certification requirements.* (a) No shipper shall offer and no air carrier or other operator of aircraft shall knowingly accept explosives and other dangerous articles for carriage by air unless the package is accompanied by or shows a clear and plainly visible statement signed by the shipper or his duly authorized agent that the shipment complies with the requirements of this part. No such shipment shall be accepted for transportation by passenger-carrying aircraft unless the shipper's certification includes an additional statement that the shipment is within the limits prescribed by this part for passenger-carrying aircraft. Any air carrier or other operator of aircraft may rely on such a certification as prima facie evidence that the shipment so certified complies with the requirements of this part.

NOTE: The following statement signed by the shipper or his duly authorized agent will be accepted as meeting this requirement: This is to certify that the contents of this package are properly described by name and are packed, marked, and labeled and are in proper condition for transportation according to the regulations prescribed by the Interstate Commerce Commission and the Civil Aeronautics Board.

For shipment on passenger-carrying aircraft the following must be added to the above: This shipment is within the limitations prescribed for passenger-carrying aircraft.

(b) The shipper's certification of compliance with this part shall be made upon the ICC label affixed to each package containing explosives or other dangerous articles when there is a provision on the face of the label for such certification. When the label used does not so provide,

such certification shall be made in duplicate and signed by the shipper or his duly authorized agent for each consignment. One signed copy shall accompany the shipment and the other signed copy shall be retained by the originating carrier. The air carrier or other operator of aircraft may also require the shipper to have the shipper's statement certified by an authority approved by the carrier.

§ 49.14 Quantity equivalents. Quantities measured by the metric system or the imperial system may be substituted on the basis of one liter or one imperial quart per quart specified, and 500 grams per pound specified, up to one gallon for liquids or 10 pounds for solids.

§ 49.15 Containers for liquids. (a) Liquids shall be packed only in inside containers which are securely closed, sufficient in strength to prevent any leakage or distortion of the containers caused by change in temperature or pressure during transit, and so filled as to provide adequate outgassing.

(b) When liquids are restricted to quantities of one quart in inside containers, each such inside container shall be packed in a strong outside container with suitable cushioning and absorbent material to prevent breakage or leakage.

(c) When liquids are restricted to quantities of less than one quart in inside containers, each such inside container shall be packed in a strong outside container with suitable cushioning and absorbent material to prevent breakage or leakage: *Provided*, That such inside containers of a total capacity not to exceed one quart may be packed in a strong outside container with suitable cushioning and absorbent material to prevent breakage or leakage.

LOADING AND HANDLING REQUIREMENTS

§ 49.21 Cargo location. (a) Articles subject to the requirements of this part shall not be carried in the cabins of passenger-carrying aircraft.

(b) Any article acceptable only for cargo aircraft shall be carried in a location accessible to a crew member in flight.

(c) Articles shall not be placed in the same cargo pit or bin nor placed side by side in cabins so that yellow label material is mixed with white label material.

§ 49.22 Notification of pilot in command. When articles subject to the provisions of this part are carried on aircraft, the operator of the aircraft shall be responsible for informing the pilot in command of the name of the explosive or other dangerous article, the type of label, the quantity, and the location thereof. The cargo load manifest shall be conspicuously marked to indicate articles subject to the provisions of this part.

§ 49.23 Damaged articles. If any package subject to the provisions of this part, except as otherwise provided in § 49.25, appears to the pilot in command or the operator of the aircraft to be damaged or leaking, the operator of the aircraft shall remove it from the aircraft and it shall not be returned to transportation by air until it has been deter-

mined that the package and its contents comply with the requirements of this part. In such instances, the operator of the aircraft shall promptly report the circumstances to a representative of the Administrator or the Board.

§ 49.24 Quantity limitations. Except as provided below, not more than 50 pounds net weight of any article subject to the packing, marking, and labeling provisions of this part may be carried in any cargo pit or bin on passenger-carrying aircraft, or in any inaccessible cargo pit or bin on any aircraft:

(a) Not more than 150 pounds net weight of nonflammable compressed gas may be carried in any single cargo pit or bin on passenger-carrying aircraft or in any inaccessible cargo pit or bin on any aircraft.

(b) Not more than 40 units of radioactive material Groups I or II may be carried on any aircraft.

§ 49.25 Special requirements for radioactive materials. (a) Whenever any shipment of radioactive materials is damaged or appears to the pilot in command or the operator of the aircraft to be damaged, the operator shall remove it from the aircraft and segregate it from human contact. The operator of the aircraft shall immediately contact the shipper for disposal instructions and notify the Administrator or the Board of the incident.

(b) Whenever there is any actual spillage of radioactive materials of such nature that the materials are no longer contained within their inner containers, no attempt shall be made to remove or clean up the materials until instructions are received from the shipper or other qualified persons, and then only when necessary protective measures have been taken, and qualified persons are present to supervise the handling.

(c) A container or group of containers of radioactive materials shall not be placed closer than the distance specified in the distance table below to any area that may be continuously occupied by crew members or passengers. If more than one such container is present, the distance shall be computed from such table by adding together the number of units shown on the label of each package.

TABLE FOR PERSONNEL SEPARATION¹

Total number of units ²	Minimum distance to crew members and passengers (feet) ³
0-2	1
3-5	2
6-10	3
11-20	4
21-30	5
31-40	6

¹ This table is designed to afford maximum protection to human beings from the effects of radiation and will not protect X-ray film from such effects under all conditions of exposure. Distance separation required by this table for Groups I and II (red label) radioactive materials is not required for Group III (blue label) radioactive materials.

² Total number of units refers to the number found on the red label of a single package entered on the line reading, "Radiation Units from Package: No. * * *". For two or more packages stored together, the total of the numbers of all such packages is meant.

³ Distance means the number of feet from the nearest edge of the nearest radioactive container.

(d) If any aircraft is engaged frequently in the transportation of radioactive materials, it shall be the responsibility jointly of the shipper and the operator of the aircraft to monitor all personnel involved so that the accepted limits of personnel radiation exposure are not exceeded.

PASSENGER-CARRYING AIRCRAFT

§ 49.31 Articles which may be carried on passenger-carrying aircraft. No explosive or other dangerous article shall be carried on passenger-carrying aircraft, other than the following:

(a) Explosives and other dangerous articles which are exempt under the ICC Regulations from the specification packing, marking, and labeling requirements of Parts 72, 73, and 78 thereof (49 CFR Parts 72, 73, 78) applicable to rail express.

(b) Class C explosives when packed, marked, and labeled in accordance with the requirements of Parts 72 and 73 of the ICC Regulations (49 CFR Parts 72, 73) for shipment by rail express except that the maximum that may be packed in one outside container is 50 pounds.

(c) Subject to the limitations contained in § 49.24 (a), nonflammable compressed gases when in ICC approved cylinders and at pressures not to exceed those permitted by the ICC Regulations for shipment by rail express except that the following may not be carried: Anhydrous ammonia, boron trifluoride, chlorine, hydrogen bromide, hydrogen chloride, nitrosyl chloride, and sulfur dioxide.

(d) Motion picture film and X-ray film (nitrocellulose base) exposed and unexposed when packed, marked, and labeled in accordance with the requirements of Parts 72 and 73 of the ICC Regulations (49 CFR Parts 72, 73) for shipment by rail express.

(e) Pyroxylin plastics containing nitrocellulose in sheets, rolls, rods, or tubes when packed, marked, and labeled in accordance with the requirements of Parts 72 and 73 of the ICC Regulations (49 CFR Parts 72, 73) for shipment by rail express.

CARGO AIRCRAFT

§ 49.41 Articles which may be carried on cargo aircraft. In addition to the articles acceptable for transportation on passenger-carrying aircraft, the following articles may be carried on cargo aircraft:

(a) Any article acceptable under the ICC Regulations for transportation by rail express. The maximum quantity in any one outside package or container shall not exceed that prescribed for rail express in the commodity list of Part 72 of the ICC Regulations (49 CFR Part 72).

(b) (1) Radioactive materials such as ores, residues, etc., of low activity packed in strong, tight containers are exempt from the packing and labeling requirements of this part for shipment in plane-load lots, provided the per-planeload radiation intensity at one meter from

any outside surface of the load (as loaded in place in the airplane) does not exceed 10 milliroentgens per hour of gamma radiation or equivalent. There shall be no loose radioactive material in the airplane, and the shipment must be braced and lashed so as to prevent leakage or shift of lading under normal conditions of flight.

(2) It is the responsibility of the consignor and/or consignee as appropriate to supervise all loading and unloading operations and to monitor all personnel involved so that the accepted limits of personnel radiation exposure are not exceeded.

Effective: June 25, 1958.

Adopted: April 21, 1958.

By the Civil Aeronautics Board.

[SEAL] M. C. MULLIGAN,
Secretary.

[F. R. Doc. 58-3121; Filed, Apr. 25, 1958;
8:50 a. m.]

TITLE 19—CUSTOMS DUTIES

Chapter I—Bureau of Customs, Department of the Treasury

[T. D. 54574]

PART 8—LIABILITY FOR DUTIES, ENTRY OF IMPORTED MERCHANDISE

INVOICES AND ENTRY; STAINLESS STEEL TABLE FLATWARE

In order to facilitate the examination and identification of imports of stainless steel table flatware and to provide for more detailed descriptions of such articles on customs invoices and entries, customs invoices, in addition to all other information required by law or regulations, shall include descriptions of such articles in accordance with the classifications set forth below in this Treasury decision, which classifications correspond with those in statistical Schedule A of the Department of Commerce (as amended) for the commodity numbers indicated herein:

Schedule A commodity number	Commodity description and economic class	Unit of quantity
	Table flatware wholly of metal and in chief value of stainless steel (including knives, forks, spoons, and other serving pieces commonly used at the table for eating purposes or for service at the table):	
	Less than 4 inches long (exclusive of handle), and with handles of stainless steel other than austenitic:	
6130 7030	Knives (including table serving knives) and steels, 10.2 inches or less in over-all length:	No.
6130 7060	Valued less than \$3 per dozen pieces (formerly part of 6130 7500).	(9)
	Valued \$3 or more per dozen pieces (formerly part of 6130 7500).	(9)
6130 7090	Knives (including table serving knives) and steels, over 10.2 inches in over-all length:	No.
6130 7120	Valued less than \$3 per dozen pieces (formerly part of 6130 7500).	(9)
	Valued \$3 or more per dozen pieces (formerly part of 6130 7500).	(9)
6130 7150	Forks (including table serving forks), 10.2 inches or less in over-all length:	No.
6130 7180	Valued less than \$3 per dozen pieces (formerly part of 6130 7500).	(9)
	Valued \$3 or more per dozen pieces (formerly part of 6130 7500).	(9)
6130 7210	Forks (including table serving forks), over 10.2 inches in over-all length:	No.
6130 7240	Valued less than \$3 per dozen pieces (formerly part of 6130 7500).	(9)
	Valued \$3 or more per dozen pieces (formerly part of 6130 7500).	(9)
	Less than 4 inches long (exclusive of handle), and with handles of austenitic steel:	
6130 7270	Knives (including table serving knives) and steels, 10.2 inches or less in over-all length:	No.
6130 7310	Valued less than \$3 per dozen pieces (formerly part of 6130 8000).	(9)
	Valued \$3 or more per dozen pieces (formerly part of 6130 8000).	(9)
6130 7340	Knives (including table serving knives) and steels, over 10.2 inches in over-all length:	No.
6130 7370	Valued less than \$3 per dozen pieces (formerly part of 6130 8000).	(9)
	Valued \$3 or more per dozen pieces (formerly part of 6130 8000).	(9)
6130 7410	Forks (including table serving forks), 10.2 inches or less in over-all length:	No.
6130 7440	Valued less than \$3 per dozen pieces (formerly part of 6130 8000).	(9)
	Valued \$3 or more per dozen pieces (formerly part of 6130 8000).	(9)
6130 7470	Forks (including table serving forks), over 10.2 inches in over-all length:	No.
6130 7510	Valued less than \$3 per dozen pieces (formerly part of 6130 8000).	(9)
	Valued \$3 or more per dozen pieces (formerly part of 6130 8000).	(9)
	4 inches long or over (exclusive of handle):	
6130 7540	Knives (including table serving knives) and steels, 10.2 inches or less in over-all length:	No.
6130 7570	Valued less than \$3 per dozen pieces (formerly part of 6130 7700 and 6130 8200).	(9)
	Valued \$3 or more per dozen pieces (formerly part of 6130 7700 and 6130 8200).	(9)
6130 7610	Knives (including table serving knives) and steels, over 10.2 inches in over-all length:	No.
6130 7640	Valued less than \$3 per dozen pieces (formerly part of 6130 7700 and 6130 8200).	(9)
	Valued \$3 or more per dozen pieces (formerly part of 6130 7700 and 6130 8200).	(9)
6130 7670	Forks (including table serving forks), 10.2 inches or less in over-all length:	No.
6130 7710	Valued less than \$3 per dozen pieces (formerly part of 6130 7700 and 6130 8200).	(9)
	Valued \$3 or more per dozen pieces (formerly part of 6130 7700 and 6130 8200).	(9)
6130 7740	Forks (including table serving forks), over 10.2 inches in over-all length:	No.
6130 7770	Valued less than \$3 per dozen pieces (formerly part of 6130 7700 and 6130 8200).	(9)
	Valued \$3 or more per dozen pieces (formerly part of 6130 7700 and 6130 8200).	(9)
	Spoons (including serving spoons) and other table serving flatware, n. e. s. (including baby food pushers, cake breakers, cheese scoops, ladles, non-serrated cake servers, pastry servers, all pierced items, tongs such as asparagus, salad, and sugar tongs, etc.):	
6130 7810	10.2 inches or less in over-all length:	No.
6130 7840	Valued less than \$3 per dozen pieces (formerly part of 6200 9700) (specify by name).	(9)
	Valued \$3 or more per dozen pieces (formerly part of 6200 9700) (specify by name).	(9)
6130 7870	Over 10.2 inches in over-all length:	No.
6130 7910	Valued less than \$3 per dozen pieces (formerly part of 6200 9700) (specify by name).	(9)
	Valued \$3 or more per dozen pieces (formerly part of 6200 9700) (specify by name).	(9)

The Customs Regulations are amended as follows:

1. Section 8.13 (h) is amended by adding in the proper alphabetical order the following to the list of merchandise with respect to which additional information is required to be furnished on or with customs invoices, and by placing opposite such addition the number of this Treasury decision:

Stainless Steel Table Flatware.

2. Section 8.15 (c) (1) is amended by substituting a comma for the period and adding "except in the case of articles specified in T. D. 54574, \$250 or less." in order to complete the sentence.

3. Section 8.27 is amended by substituting the following for the third sentence: "The dutiable entries shall be made in triplicate, except that entries covering stainless steel table flatware and manufactures of cotton shall be in quintuple."

4. Section 8.30 (a) is amended by inserting in the first sentence "stainless steel table flatware and" before "manufactures of cotton."

5. Section 8.37 (a) is amended by changing the last sentence to read: "In the case of stainless steel table flatware or articles manufactured from cotton, the description shall reflect any correction thereof reported after the filing of the warehouse entry."

(R. S. 251, secs. 481, 484, 557, 624, 46 Stat. 719, 722, as amended, 744, as amended, 759; 19 U. S. C. 66, 1481, 1484, 1557, 1624)

The amendments of sections of the regulations relating to entries and withdrawals (§§ 8.27, 8.30, and 8.37) in this decision shall be effective on and after May 1, 1958. The amendments of sections of the regulations relating to invoices (§§ 8.13 and 8.15) in this decision shall be effective after 30 days from the date of publication of this decision in the FEDERAL REGISTER.

[SEAL] D. B. STRUBINGER,
Acting Commissioner of Customs.

Approved: April 22, 1958.

A. GILMORE FLUES,
Acting Secretary of the Treasury.

[F. R. Doc. 58-3144; Filed, Apr. 25, 1958;
8:54 a. m.]

TITLE 39—POSTAL SERVICE

Chapter I—Post Office Department

PART 201—PROCEDURES OF THE POST OFFICE DEPARTMENT

PROCEEDINGS UNDER ACTS RELATING TO
LOTTERIES, FRAUDULENT SCHEMES, AND
OBSCENE, LEWD, ETC., MATTERS, ETC.

Effective April 26, 1958, Part 201—Procedures of the Post Office Department is amended by striking out §§ 201.1 through 201.27 in the table of sections and in the text of such Part 201, and by inserting in lieu thereof the following:

SUBPART—RULES OF PRACTICE IN PROCEEDINGS
PURSUANT TO THE ADMINISTRATIVE PRO-
CEDURE ACT UNDER 37 U. S. C. 259, 259a
AND 732

Sec.	Scope of rules.
201.1	Offices, business hours.
201.2	Informal dispositions.
201.3	Formal proceedings; complaints.
201.4	Notices of hearing and answer date.
201.5	Service of Complaint and notice of hearing.
201.6	Filing documents for the record.
201.7	Answers.
201.8	Default proceedings.
201.9	Change of place of hearing.
201.10	Compromises.
201.11	Amendment of pleadings.
201.12	Continuances and extensions.
201.13	Appearances.
201.14	Admission to practice.
201.15	Hearings.
201.16	Judicial Officer.
201.17	Hearing examiners.
201.18	Presiding officers.
201.19	Powers.
201.20	Evidence.
201.21	Subpoenas.
201.22	Witness fees.
201.23	Depositions.
201.24	Transcripts.
201.25	The record.
201.26	Proposed findings and conclusions.
201.27	

Sec.	
201.28	Initial decision.
201.29	Appeal from initial decision.
201.30	Tentative decision.
201.31	Final orders.
201.32	Public information.
201.33	Modification or revocation of orders.
201.34	Supplementary orders.

AUTHORITY: §§ 201.1 to 201.34 issued under R. S. 161, 396, as amended; 5 U. S. C. 22, 369.

§ 201.1 *Scope of rules.* The rules of practice in this subpart shall be applicable in all proceedings before the Post Office Department wherein the adjudication is required by the Administrative Procedure Act (5 U. S. C. 1001 et seq.) to be determined on the record after opportunity for an agency hearing. The rules in this subpart shall apply to cases instituted under prior rules of practice.

§ 201.2 *Offices, business hours.* The offices of all officials and employees mentioned in the rules in this subpart are located at 12th and Pennsylvania Avenue NW., Washington 25, D. C., and are open for the transaction of business each business day, except Saturday, from 8:45 a. m. to 5:15 p. m.

§ 201.3 *Informal dispositions.* The provisions of this subpart hereinafter appearing shall not preclude the informal disposition of any matter within the scope of this subpart (§ 201.1), either before or after the filing of a complaint (§ 201.4), where time, the nature of the proceeding, and the public interest permit.

§ 201.4 *Formal proceedings; complaints.* Whenever the General Counsel of the Post Office Department or his designated representative shall have reason to believe that any person or concern is using the mails in any manner requiring administrative action under 39 U. S. C. 259, 259a or 732, he shall prepare and file with the Docket Clerk a complaint which shall name the person or concern involved; state the legal authority and jurisdiction under which the proceeding is initiated; state the facts in a manner sufficient to enable the person or concern named therein to make answer thereto; and recommend the issuance of an appropriate order. The person or concern so named in the complaint shall be known as the respondent.

§ 201.5 *Notice of hearing and answer date.* Upon filing the complaint the Chief Hearing Examiner shall issue a notice of hearing. Said notice of hearing shall contain the date and place of the hearing and the time for filing an answer which shall not exceed 15 days from the date of service of the complaint, and a reference to the effect of failure to file an answer or appear at the hearing. The hearing date shall be no more than 30 days from the date of issuance of the notice.

§ 201.6 *Service of complaint and notice of hearing.* (a) The Chief Hearing Examiner shall cause a duplicate original of the notice of hearing and a copy of the complaint to be transmitted to the postmaster at any office of address of the respondent or to the Inspector in Charge of any Division in which the respondent is doing business which

shall be delivered to the respondent or his agent by said postmaster or a supervisory employee of his post office or a postal inspector. A receipt acknowledging delivery of the notice shall be secured from the respondent or his agent, which receipt shall be forwarded to the Docket Clerk, Division of Hearing Examiners, Room 5115, New Post Office Department Building, Washington 25, D. C., and shall become a part of the record in the case.

(b) In the event that no person can be found upon whom service of the notice of hearing and the complaint can be effected pursuant to paragraph (a) of this section, or in the event of the refusal of the respondent or his agent to execute the receipt provided for by paragraph (a) of this section, the notice of hearing may be delivered in the usual manner with other mail addressed to the respondent, and a statement to that effect showing the time and place of such delivery shall be made and signed by the postal employee who so delivered the notice of hearing, which statement shall be forwarded to the Docket Clerk and shall constitute prima facie evidence of service of the complaint and notice of hearing.

§ 201.7 *Filing documents for the record.* (a) All pleadings, motions, orders and other documents filed for the record shall be delivered to the Docket Clerk who shall cause the same to be recorded and filed, and copies thereof delivered to the assigned hearing examiner and to all parties to the proceeding.

(b) Four copies of all such documents must be submitted, except as otherwise provided in this subpart, or as ordered by the hearing examiner. One copy shall be signed as the original.

(c) Such documents shall be dated and shall state the docket number and title of the proceeding. Any pleading or other document required by order of the assigned hearing examiner, to be submitted or filed by a specified date, shall be delivered to the Docket Clerk on or before such date. The date of filing shall be entered thereon by the Docket Clerk.

§ 201.8 *Answers.* (a) The original and three copies of the respondent's answer shall be filed with the Docket Clerk on or before the date fixed for the filing thereof in the notice of hearing which time is not to exceed 15 days from the service of the complaint.

(b) The answer shall contain a concise statement admitting, denying or explaining each of the allegations set forth in the complaint.

(c) Any facts alleged in the complaint which are expressly admitted or not denied in the answer may be considered as proved, and no further evidence in respect of such facts need be adduced at the hearing.

(d) The answer shall be signed personally by an individual respondent, or, in the case of a partnership by one of the partners, or, in the case of a corporation or association, by a responsible officer thereof.

(e) The answer shall set forth the respondent's address and the name and address of his attorney, if he is so represented.

§ 201.9 *Default proceedings.* If the respondent fails to deliver his answer to the Docket Clerk within the time specified in the notice of hearing, or, having filed answer, fails to appear at the hearing, he shall be deemed to be in default, to have admitted the allegations of the complaint, and to have waived hearing and further procedural steps. An appropriate order as recommended in the complaint will thereafter be issued by the Judicial Officer without further notice to the respondent.

§ 201.10 *Change of place of hearing.* Not later than the date fixed in the notice of hearing for the filing of respondent's answer, application may be filed with the Docket Clerk by any party to a proceeding requesting that a hearing be held to receive evidence on behalf of the applicant at a place other than that designated for hearing in the notice. In support of such application the applicant shall submit under oath or affirmation a statement outlining the evidence to be offered in such location; the relevancy thereof; the names and addresses of the witnesses who will testify; and the reasons why such evidence cannot be produced at Washington, D. C. The presiding officer shall grant or deny such application having due regard for the convenience and necessity of the parties to the proceeding or their representatives.

§ 201.11 *Compromises.* (a) Where time, the nature of the proceeding, and the public interest permit, respondents may, prior to the time specified for the filing of the answer, make application to the General Counsel or his designated representative for a compromise or settlement of any proceeding instituted hereunder.

(b) In proceedings wherein the complaint recommends the issuance of an order under sections 255, 259, or 259a of title 39, U. S. Code, respondents may, pursuant to the provisions of paragraph (a) of this section, make application to the General Counsel or his designated representative specifically for the suspension of further proceedings by the filing of an affidavit providing for the discontinuance and abandonment of the use of the mails in the conduct of the enterprise alleged in the complaint to be unlawful.

(c) The making of such application shall not affect the requirement that the answer be filed within the time specified.

§ 201.12 *Amendment of pleadings.* An amendment of a pleading may be offered by any party at any time prior to the close of the hearing. Amendments proposed prior to the hearing shall be filed with the Docket Clerk and thereafter with the hearing examiner.

§ 201.13 *Continuances and extensions.* (a) Continuances and extensions will not be granted by the presiding officer except for substantial cause shown, and then for a maximum of 10 days. Exceptional cause must be shown before any additional continuance or extension will be granted.

(b) Applications for extensions of time to file appeal briefs or other documents in support of any appeal from the initial

decision shall be delivered to the Docket Clerk who shall forward the same to the Judicial Officer and promptly notify the applicant of the granting or denial thereof as he shall direct.

§ 201.14 *Appearances.* (a) A respondent may appear and be heard in person or by attorney.

(b) An attorney representing a respondent must file with the Docket Clerk a written authorization from the respondent to represent him in the proceeding, prior to any participation therein.

(c) Where a respondent is represented by a duly authorized attorney the service of all subsequent pleadings, notices and other papers shall be effected by mailing the same to his attorney at the post office address stated in his written authorization.

(d) Prompt notice of change of attorneys must be filed.

§ 201.15 *Admission to practice.* Attorneys may practice before the Department in accordance with the Department Rules of Practice as specified in § 202.1-6 of this chapter.

§ 201.16 *Hearings.* Hearings are held in Room 5241, Post Office Department, Washington 25, D. C., and in such other locations as may be designated by the presiding officer designated for the particular hearing.

§ 201.17 *Judicial Officer.* The Judicial Officer is the officer duly authorized to render a final departmental decision for the Postmaster General. The Judicial Officer, acting for the Postmaster General, may also preside at the reception of evidence and make the final departmental decision. Either party at the time of the filing of the complaint or answer or not less than 10 days prior to the date scheduled for the hearing may petition the Judicial Officer requesting that he preside at the reception of evidence and make the final departmental decision based upon his hearing of the evidence. The reasons for such a request shall be stated in the petition. This matter shall be within the discretion of the Judicial Officer and, if he grants the request of the petitioner, the parties shall be notified of the fact. In all other cases a hearing examiner shall preside at the reception of evidence. In any case before final agency decision has been rendered the Judicial Officer may order the hearing reopened for the purpose of taking additional evidence by the examiner who presided or the Judicial Officer.

§ 201.18 *Hearing examiners.* Hearing examiners, one of whom shall be designated as the Chief Hearing Examiner, shall be appointed and qualified pursuant to section 11 of the Administrative Procedure Act, 5 U. S. C. 1010. Proceedings shall be assigned to a hearing examiner by the Chief Hearing Examiner and notice of the assignment given to the parties.

§ 201.19 *Presiding officers.* (a) All hearings shall be presided over by a duly qualified hearing examiner or the Judicial Officer of the Post Office Department

in those cases where he accepts jurisdiction in accordance with § 201.17. Notice of any change in the presiding officer shall be promptly given to the parties.

(b) All orders issued by presiding officers with respect to matters before them shall be filed by them with the Docket Clerk. The Docket Clerk shall cause copies thereof to be served upon the appropriate parties to the proceeding.

§ 201.20 *Powers.* With respect to any proceeding assigned to him, the presiding officer shall have the following authority, to:

(1) Administer oaths and affirmations.
(2) Examine witnesses where necessary for clarity of the record.

(3) Rule upon offers of evidence subject to the limitations thereon provided by the rules in this subpart.

(4) Rule upon offers of proof.
(5) Receive oral and documentary evidence for the record.

(6) Grant or deny applications for the taking of depositions in accordance with the rules in this subpart.

(7) Regulate the course of the hearing, maintain discipline and decorum and exclude from the hearing any person acting in an indecorous manner.

(8) Require the filing of memoranda of law and presentation of oral argument with respect to any question of law upon which a presiding officer is required to rule during the course of the hearing.

(9) Hold conferences for the settlement or simplification of issues by consent of the parties.

(10) Dispose of procedural requests and similar matters.

(11) Make initial or final departmental decisions in conformity with the Administrative Procedure Act as hereinafter set forth in this subpart.

§ 201.21 *Evidence.* (a) Except as otherwise provided in the rules of practice in this subpart, the rules of evidence governing civil proceedings in matters not involving trial by jury in the courts of the United States shall govern: *Provided, however,* That such rules may be relaxed to such extent as the presiding officer may deem proper to insure an adequate and fair hearing. Irrelevant, immaterial or repetitious evidence shall be excluded by the presiding officer.

(b) The testimony of witnesses shall be under oath or affirmation and witnesses shall be subject to cross-examination.

(c) Agreed statements of fact may be received in evidence.

(d) Official notice or knowledge may be taken of all matters of which judicial notice or knowledge may be taken by the Federal Courts.

(e) Medical or other scientific books or essays will not be admitted in evidence in lieu of oral expert testimony.

(f) Affidavits containing opinions or statements of an affiant will not be received in evidence, except as provided by paragraph (h) of this section.

(g) Testimonials will not be received in evidence of the efficacy or quality of any product or thing sold through the mails.

(h) The written statement of a competent witness may be received in evidence provided that such statement is relevant to the issues, and provided further that the witness whose statement is offered shall testify under oath at the hearing that the statement is in all respects true, and, in the case of expert witnesses, that the statement correctly states his opinion or knowledge concerning the matters in issue.

(i) Objections to the admission of evidence shall include a brief statement of the grounds thereof. Formal exceptions to the rulings of the presiding officer are unnecessary.

(j) At any time prior to the filing of his decision, the presiding officer may, for good cause shown, reopen the case for the reception of further evidence.

§ 201.22 *Subpoenas.* The Post Office Department is not authorized by law to issue subpoenas requiring the attendance or testimony of witnesses.

§ 201.23 *Witness fees.* The Post Office Department is not authorized by law to pay witness fees or expenses to witnesses for a respondent.

§ 201.24 *Depositions.* (a) Not later than the date fixed in the notice of hearing for the filing of respondent's answer, application may be filed with the Docket Clerk by any party to a proceeding for the taking of testimony by deposition. In support of such application the applicant shall submit under oath or affirmation a statement setting out the reasons why such testimony should be taken by deposition; the time when, the place where, and the name and address of the witness whose deposition is desired; the subject matter concerning which the witness is expected to testify; the relevancy thereof; and the name and address of the person before whom the deposition is to be taken.

(b) If the application be granted, the order for the taking of the deposition will specify the time and place thereof, the name of the witness, the person before whom the deposition is to be taken and any other necessary information.

(c) The testimony of the witness shall be reduced to writing and shall be subscribed by the witness and certified in the usual form by the deposition officer, and shall be filed as directed in the order.

(d) At the hearing any part or all of the deposition may be offered in evidence by any party who was present or represented at the taking of the deposition or who had notice thereof. If the deposition is not offered and received in evidence, it shall not be considered as a part of the record in the proceeding. The admissibility of depositions or parts thereof shall be governed by the rules of evidence.

(e) The party on behalf of whom the deposition is taken must pay all fees required to be paid to witnesses and deposition officer, and must provide an original and one copy of the deposition for the official record and must serve one copy upon the opposing party.

(f) Within the United States or within a territory or insular possession,

subject to the Dominion of the United States, depositions may be taken before an officer authorized to administer oaths by the laws of the United States or of the place where the examination is held; within a foreign country, depositions may be taken before a Secretary of an Embassy or Legation, Consul General, Vice Consul or Consular Agent of the United States, or any other person designated in the order for the taking of a deposition.

(g) Depositions may also be taken and submitted on written interrogatories in substantially the same manner as depositions taken by oral examination. When a deposition is taken upon written interrogatories and cross-interrogatories, none of the parties shall be present or represented, and no person, other than the witness, a stenographic reporter, and the officer shall be present at the examination of the witness, which fact shall be certified by the officer, who shall propound the interrogatories and cross-interrogatories to the witness in their order and reduce the testimony to writing in the witness' own words.

§ 201.25 *Transcript.* (a) Hearings shall be stenographically reported by a contract reporter of the Post Office Department under the supervision of the assigned presiding officer. No oral argument upon any matter shall be included in the transcript unless ordered by the presiding officer. A copy of the transcript shall be a part of the record and the sole official transcript of the proceeding. Copies of the transcript shall be supplied to the parties to the proceeding by the reporter at rates not to exceed the maximum rates fixed by contract between the Post Office Department and the reporter. Copies of parts of the official record other than the transcript may be obtained by the respondent from the reporter upon the payment to him of a reasonable price therefor.

(b) Changes in the official transcript may be made only when they involve errors affecting substance and then only in the manner herein provided. No physical changes shall be made in or upon the official transcript, or copies thereof, which have been filed with the record. Within 10 days after the receipt by any party of a copy of the official transcript, or any part thereof, he may file a motion requesting correction of the transcript. Four copies of said motion shall be delivered to the Docket Clerk, who shall cause same to be recorded and filed. Opposing counsel shall notify the presiding officer in writing of his concurrence or disagreement with the requested corrections. Thereafter, the presiding officer shall by order specify the corrections to be made in the transcript. The presiding officer on his own initiative may order corrections to be made in the transcript with prompt notice to the parties of the proceeding. Any changes ordered by the hearing examiner other than by agreement of the parties shall be subject to objection and exception.

§ 201.26 *The record.* The transcript of testimony or summary of proceedings and testimony together with all plead-

ings, orders, exhibits, briefs and other documents filed in the proceeding, shall constitute the official record of the proceeding.

§ 201.27 *Proposed findings and conclusions.* (a) Each party to a proceeding, except those who fail to answer the complaint or having answered fail to appear at the hearing, may, unless at the discretion of the presiding officer such is not appropriate, submit proposed findings of fact, conclusions of law either in oral or written form in the discretion of the presiding officer. The presiding officer may also require parties to any proceeding to submit proposed findings of fact and conclusions of law with supporting reasons. Unless given orally the date set for filing of proposed findings of fact and conclusions of law shall be within 15 days after the delivery of the official transcript to the Docket Clerk who shall notify both parties of the date of its receipt. The filing date for proposed findings shall be the same for both parties. If not submitted by such date, or unless extension of time for the filing thereof is granted, they will not be included in the record or given consideration.

(b) Except when presented orally before the close of the hearing, proposed findings of fact shall be set forth in serially numbered paragraphs and shall state with particularity all evidentiary facts in the record (with appropriate citations to the transcript or exhibit relied upon) supporting the conclusions proposed by the party filing same. Each proposed conclusion shall be separately stated.

§ 201.28 *Initial decision.* (a) The hearing examiner shall render an oral initial decision at the close of the hearing when the nature of the case and the public interest warrant. Any party who desires an oral initial decision shall notify the hearing examiner and the opposing party at least 5 days prior to the date set for hearing. Proposed findings may then be submitted either orally or in writing by both parties at the conclusion of the hearing.

(b) If an oral initial decision is not rendered, a written initial decision shall be rendered at the earliest possible date. The initial decision shall become the final departmental decision unless an appeal is perfected according to the provisions of § 201.29.

(c) The initial decision of the hearing examiner shall include findings and conclusions with the reasons therefor upon all the material issues of fact, law or discretion presented on the record, and the appropriate order or denial thereof.

(d) The Docket Clerk shall cause a copy of the hearing examiner's initial decision to be served upon each party who participated in the hearing.

§ 201.29 *Appeal from initial decision.* (a) Any party of record in a proceeding, except those who failed to answer the complaint or having answered fail to appear at the hearing, may appeal to the Judicial Officer for the Post Office Department by filing exceptions in a brief on appeal within 15 days from the receipt of the examiner's decision.

(b) If an initial decision is rendered orally by the hearing examiner at the close of the hearing, he may then orally give notice to the parties participating in the hearing of the time limit within which an appeal must be filed. Such time limit shall not exceed 15 days from the date of the receipt of the transcript by the parties.

(c) Upon receipt of the appeal brief the Docket Clerk shall promptly transmit the record of the proceedings to the Judicial Officer for the Post Office Department, the officer duly authorized to render the final departmental decision for the Postmaster General, and the Docket Clerk shall notify the other parties of the date for the filing of the reply brief. The date for the filing of the reply brief of appellee shall be set for ten days after receipt of the appellant brief. No additional appellate briefs shall be received.

(d) Briefs upon appeal shall be filed in triplicate with the Docket Clerk and contain the following matter in the order indicated below:

(1) A subject index of the matters presented, with page references; a table of cases alphabetically arranged; a list of statutes and texts cited with page references.

(2) A concise abstract or statement of the case.

(3) Numbered exceptions to specific findings and conclusions of fact or conclusions of law of the presiding officer.

(4) A concise argument clearly setting forth points of fact and of law relied upon in support of each exception taken, together with specific references to the parts of the record and the legal or other authorities relied upon.

(e) Unless permission be granted by the Judicial Officer no brief shall exceed 50 printed or 100 typewritten pages double spaced.

(f) The time to file briefs will be extended by the Judicial Officer only upon written application for good cause shown for a maximum of ten days. The Docket Clerk shall promptly notify the applicant of the decision of the Judicial Officer on the application. If the appeal brief is not filed within the time prescribed, the party so defaulting will be deemed to have abandoned the appeal.

(g) Upon the perfection of any appeal the Judicial Officer shall make and sign the final departmental decision and deliver the same to the Docket Clerk for transmittal to the parties.

§ 201.30 *Tentative decision.* When the Judicial Officer is acting as presiding officer, he may render a tentative decision either orally or in writing prior to the final decision, to which either party may file exceptions in the manner provided by § 201.29.

§ 201.31 *Final orders.* (a) Copies of the final departmental decision and order shall be incorporated in the record of the proceeding. The Docket Clerk shall cause the order to be published in the Postal Bulletin and transmitted to such postmasters and other officers and employees of the postal service as may be required to put the provisions of said order into effect.

(b) Copies of the decision and order shall be promptly served upon each party to the proceeding.

§ 201.32 *Public information.* Copies of all final opinions or orders, except those required for good cause to be held confidential, shall be available for public inspection in the Library of the Post Office Department during regular office hours.

§ 201.33 *Modification or revocation of orders.* (a) Any party against whom an order has been issued may file with the Docket Clerk an original and three copies of an application for modification or revocation by the Judicial Officer. Said application shall set forth the grounds upon which it is based; must contain a statement to the effect that the unlawful enterprise against which the order is directed is no longer being conducted under the name or names specified in the order or any other name and that the unlawful scheme will not be resumed in the future under such names or any other names; and it must be sworn to by the applicant.

(b) The General Counsel shall make written reply to the application and a copy shall be delivered to the applicant by the Docket Clerk. Thereafter an order granting or denying such application will be issued by the Judicial Officer.

§ 201.34 *Supplementary orders.* Whenever the General Counsel or his designated representative shall have reason to believe that any person or concern is evading or attempting to evade the provisions of any order issued pursuant to the rules in this subpart or any prior rules by conducting a similar enterprise under a different name or at a different address he shall prepare and file with the Docket Clerk a petition with accompanying evidence setting forth the alleged evasion or attempted evasion of the order and requesting the issuance of a supplementary order against the name or names allegedly used. This shall be forwarded to the Judicial Officer. Notice shall then be given by the Docket Clerk to the person or concern that such an order has been requested and of their opportunity to file answer within 10 days of the notice. The Judicial Officer shall, within 10 days from the answer date, make and file a decision granting or denying the supplemental order.

HERBERT B. WARBURTON,
Acting General Counsel.

The foregoing are adopted as the rules of practice of the Post Office Department.

[SEAL] CHARLES D. ABLAND,
Judicial Officer for the
Post Office Department.

[F. R. Doc. 58-3160; Filed, Apr. 25, 1958;
8:56 a. m.]

PART 203—HEARINGS ON MAILABILITY REVISION OF PART

Part 203—Hearings on Mailability, is amended to read as follows:

Sec.
203.1 Mailability rulings; postmaster requests.

Sec.
203.2 Notice of hearing; when required.
203.3 Notice; contents and service.
203.4 Mailer's option to answer notice or withdraw mailing.
203.5 Answer to notice; filing time and place.
203.6 Answer; contents.
203.7 Compromise and informal dispositions.
203.8 Hearings; location and time.
203.9 Burden of proof.
203.10 Disposition upon failure to answer or appear.
203.11 Proposed finding at close of hearing.
203.12 Departmental decision.
203.13 Record of proceeding; maintenance and inspection.
203.14 Formal proceedings; limitations.

AUTHORITY: §§ 203.1 to 203.14 issued under R. S. 161, 396, as amended, sec. 1, 62 Stat. 740, as amended, 741, 762, as amended, 768, as amended, 769, 781, 871, 876, 1302, 1461, 1463, 1715, 1717, 1718.

§ 203.1 *Mailability rulings; postmaster requests.* Whenever any postmaster, acting pursuant to the instructions contained in § 14.10 of this chapter (section 331.6 of the Postal Manual) withholds from dispatch any written, printed or pictorial matter or other article or thing which upon inspection appears to be of doubtful mailability under the provisions of Title 18, U. S. Code, sections 871, 876, 1302, 1461, 1463, 1715, 1717, 1718, he shall promptly forward such article or thing (or a sample, if many similar articles or things are offered for mailing) to the Fraud and Mailability Division, Office of the General Counsel, Post Office Department, Washington 25, D. C., for instructions as to whether it should be accepted for mailing or further withheld from dispatch for proceedings in accordance with the rules of procedure in this part.

§ 203.2 *Notice of hearing; when required.* Upon receipt of an article or thing submitted by the postmaster in accordance with § 203.1, the General Counsel, or his designated representative shall advise the postmaster either to accept such article or thing for mailing or, in the event that there exists probable cause to believe that it is nonmailable under the provisions of any of the statutes enumerated in such § 203.1, he shall so advise the postmaster of the office of mailing and shall direct him to serve upon the mailer, and obtain a receipt therefor, a notice which shall conform to the provisions of § 203.3. Two copies of the notice shall be filed with the Docket Clerk.

§ 203.3 *Notice; contents and service.* The notice which shall be served upon the mailer of any matter in accordance with § 203.1 shall state the reason assigned for doubt as to its mailability and shall specify the character or content of the article involved which the General Counsel, or his representative, who shall be the Complainant in the event of a formal proceeding, avers as a basis for requesting a ruling excluding such matter from the mails. The notice, signed by Complainant, shall cite the statute which relates to the mailability of such matter. It shall state that the person or concern to whom the notice is addressed may have a hearing before the Judicial Officer of the Post Office Department upon a day certain and stated in

the notice, which shall be within ten days of the date of the notice. The notice shall be sent to the postmaster promptly upon receipt and examination of the questioned article and a copy shall be sent to the mailer or to his designated counsel. Service of the notice either by the postmaster or by mailing the notice direct to the mailer shall be sufficient.

§ 203.4 *Mailer's option to answer notice or withdraw mailing.* The mailer upon whom the notice is served in accordance with § 203.3 shall have the option to apply for the withdrawal of the article or articles from the mail or to file answer to the averments in the notice and be present at the hearing.

§ 203.5 *Answer to notice; filing time and place.* The mailer's answer to the notice shall be in writing and 3 copies shall be filed with the Docket Clerk, Room 5115, Post Office Department, Washington 25, D. C.

§ 203.6 *Answer; contents.* The answer shall state the mailer's reply to each averment and specification of the notice.

§ 203.7 *Compromise and informal dispositions.* The mailer may request a conference with the General Counsel, or his designated representative, and an opportunity for informal disposition of any question of mailability. When such a request is received the scheduled hearing date will be postponed for such period of time as may be necessary to permit holding such conference and agreement for informal disposition, but in no event longer than 5 days unless specifically so requested by the mailer or his attorney of record. If no agreement is reached at the conference between the parties, the mailer shall be accorded a hearing as soon thereafter as possible.

§ 203.8 *Hearings; location and time.* Hearings shall be held in Room 5241 Post Office Department, 12th Street and Pennsylvania Avenue NW., Washington, D. C., and shall commence at 10 o'clock a. m. on the date specified, unless otherwise ordered by the Judicial Officer.

§ 203.9 *Burden of proof.* The burden of proof in any hearing under the rules in this part rests upon the Complainant.

§ 203.10 *Disposition upon failure to answer or appear.* If no answer to the notice is filed as required or if the mailer fails to appear at the hearing personally or by counsel, further participation in the case shall be deemed to have been waived by the mailer and the case shall be removed from the calendar and returned to the General Counsel who shall furnish the postmaster with his ruling on the mailability of the article under consideration.

§ 203.11 *Proposed finding at close of hearing.* Inasmuch as time is important to many mailers, the Judicial Officer, Complainant and the mailer shall be required to cooperate so as to expedite these proceedings to final decision. If parties desire to submit proposed findings of fact or conclusions of law, they shall present them to the Judicial Officer at the conclusion of the hearing unless the mailer requests additional time which

shall in no case exceed five days from the date of the hearing.

§ 203.12 *Departmental decision.* The Departmental decision of the Judicial Officer will be in writing and will be promptly rendered within five days of the hearing or submission of proposed findings and served upon the parties and the postmaster.

§ 203.13 *Record of proceeding; maintenance and inspection.* Pleadings, exhibits, testimony, briefs, decisions and orders in each case shall be incorporated and maintained as a permanent record by the Docket Clerk, and shall be subject to inspection.

§ 203.14 *Formal proceedings; limitations.* The proceedings shall be applicable only to cases where the matter offered for mailing shall be of substantial value or quantity; or the question of whether the matter may be mailed is not well settled by Departmental precedents of long standing or by decisions of the United States Courts.

The foregoing amendments to Part 203 shall be effective April 26, 1958.

HERBERT B. WARBURTON,
Acting General Counsel.

The foregoing are adopted as the rules of practice of the Post Office Department.

[SEAL] CHARLES D. ABLARD,
Judicial Officer for the
Post Office Department.

[F. R. Doc. 58-3161; Filed, Apr. 25, 1958;
8:56 a. m.]

TITLE 46—SHIPPING

Chapter I—Coast Guard, Department of the Treasury

Subchapter T—Small Passenger Vessels (Not More Than 65 Feet in Length)

[CGFR 58-14]

MISCELLANEOUS AMENDMENTS TO SUBCHAPTER

The "Rules and Regulations for Small Passenger Vessels" in 46 CFR Parts 175 through 187 (Subchapter T) and published in the FEDERAL REGISTER dated October 5, 1957 (22 F. R. 7949-7980), are considered necessary to implement and thereby give force and effect to the act of May 10, 1956 (47 U. S. C. 390-390g). This law was amended by the act of August 28, 1957, to state that the effective date for the act of May 10, 1956, and its implementing rules and regulations shall be June 1, 1958. Pursuant to the notice published in the FEDERAL REGISTER dated October 5, 1957 (22 F. R. 7949), all suggested changes to these regulations received prior to March 1, 1958, have been reviewed. This document contains those changes in these regulations which have been found to improve them.

The effective date for the regulations in this document shall be June 1, 1958. However, for those desiring the required licenses and certificates of inspection, application on appropriate Coast Guard forms may be filed, and the necessary examinations or inspections may be conducted prior to June 1, 1958.

No. 83—3

By virtue of the authority vested in me as Commandant, United States Coast Guard, by Treasury Department Order 167-20, dated June 18, 1956 (21 F. R. 4894), to promulgate regulations in accordance with section 3 of the act of May 10, 1956, the following amendments and regulations are prescribed:

PART 175—GENERAL PROVISIONS

1. The citation of authority for the regulations in Part 175 is revised to read as follows:

Authority: §§ 175.01-1 to 175.20-1 issued under sec. 3, 70 Stat. 152, 153; 46 U. S. C. 390b. Other statutory provisions interpreted or applied are cited to text in parenthesis.

SUBPART 175.05—APPLICATION

2. Section 175.05-1 is amended as follows:

a. By revising paragraph (a) (1) to read as follows:

§ 175.05-1 *Vessels subject to the requirements of this subchapter.* (a)

(1) Any vessel of a foreign nation signatory to the International Convention for the Safety of Life at Sea, 1948, and which has on board a current, valid safety certificate.

b. In paragraph (a), Table 175.05-1 (a), Footnote 6 (referred to in column 4 of the Table) is amended to read as follows:

* The meaning of the term "passenger" is as defined in the act of May 10, 1956 (sec. 1, 70 Stat. 151; 46 U. S. C. 390).

c. The following authorities shall be inserted immediately after paragraph (b), reading as follows:

(R. S. 4405, as amended, 4462, as amended, 4417, as amended, 4418, as amended; 46 U. S. C. 375, 416, 391, 392)

SUBPART 175.10—DEFINITIONS OF TERMS USED IN THIS SUBCHAPTER

3. Subpart 175.10 is amended by adding a new section to follow after § 175.10-25, reading as follows:

§ 175.10-26 *Officer in Charge, Marine Inspection.* This term means any person from the civilian or military branch of the Coast Guard designated as such by the Commandant and who, under the superintendence and direction of the Coast Guard District Commander, is in charge of an inspection zone for the performance of duties with respect to the inspections, enforcement, and administration of Title 52, Revised Statutes, and acts amendatory thereof or supplemental thereto, and rules and regulations thereunder.

4. Section 175.10-33 is amended to read as follows:

§ 175.10-33 *Recognized classification society.* This term means any organization or nationwide scope, such as the American Bureau of Shipping or Lloyd's Register of Shipping, with standards of construction or equipment which have been accepted and/or approved by the Commandant.

5. Part 175 is further amended by adding a new section to follow § 175.10-35, reading as follows:

§ 175.10-36 *Sailing vessel.* This term means a vessel with no mechanical means of propulsion, all propulsive power being provided by sails.

PART 177—CONSTRUCTION AND ARRANGEMENT

SUBPART 177.30—HATCHES

Section 177.30-5 (c) is amended to read as follows:

§ 177.30-5 *Hatches (other than engine hatches).* * * *

(c) Covers or closures for the openings described in paragraphs (a) and (b) of this section shall be secured to hatch frames or hatch coamings by hinges, captive chains, or other devices to prevent their coming adrift. Securing devices for such hatches which lead to living quarters or passenger accommodations shall be such that the hatch may be opened from either side.

(Sec. 3, 70 Stat. 152, 153; 46 U. S. C. 390b)

PART 178—WATERTIGHT SUBDIVISION

1. The heading for Subpart 178.10 is amended to read as follows:

SUBPART 178.10—BULKHEADS AND DECKS

2. Section 178.10-5 (a) is amended to read as follows:

§ 178.10-5 *Requirements for vessels, other than ferry vessels, carrying not more than 49 passengers in ocean and coastwise service.* (a) Except as otherwise provided in this section, vessels, other than ferry vessels, carrying not more than 49 passengers in ocean and coastwise service shall be fitted with not less than three watertight bulkheads, one of which shall be a collision bulkhead located as provided in § 178.10-1 (b). In general, the collision bulkhead shall be watertight to the weather deck. The remaining bulkheads shall be watertight to the bulkhead deck. The bulkheads required for machinery and fuel tank installations by Subpart 182.05 in Part 182 of this Subchapter may be substituted for two of the required bulkheads if properly constructed. Watertight bulkhead penetrations shall be in accordance with § 178.10-1 (d). The bulkhead deck shall be in accordance with § 178.10-1 (e).

3. Section 178.10-10 is amended by adding a new paragraph (b) and a subparagraph (1) thereto, reading as follows:

§ 178.10-10 *Requirements for vessels other than ferry vessels carrying not more than 49 passengers in other than ocean and coastwise service.* * * *

(b) Except as provided for in § 177.30-10 (a) of this subchapter and as otherwise provided in this paragraph, decks exposed to the weather shall be effectively watertight. Adequate freeing arrangements shall be provided.

(1) Vessels operating on protected waters are not required to comply with the provisions of this paragraph when, in the opinion of the Officer in Charge, Marine Inspection, the type of construction of the vessels is satisfactory for the service intended.

SUBPART 178.20—COCKPITS

4. Section 178.20-1 is amended by deleting paragraph (e) and by revising paragraph (a) to read as follows:

§ 178.20-1 *General.* (a) Except as otherwise provided in § 178.10-10 (b) (1), cockpits shall be self-bailing and watertight.

(Sec. 3, 70 Stat. 152, 153; 46 U. S. C. 390b)

PART 180—LIFESAVING EQUIPMENT

SUBPART 180.15—EQUIPMENT FOR LIFE FLOATS AND BUOYANT APPARATUS

1. Section 180.15-5 (b) is amended to read as follows:

§ 180.15-5 *Description of equipment for life floats and buoyant apparatus.* . . .

(b) *Paddles.* Paddles shall be not less than 4 feet long.

SUBPART 180.20—STOWAGE AND MARKING OF LIFESAVING APPLIANCES

2. Section 180.20-5 (a) is corrected by changing a reference from "§ 185.35-5" to "§ 185.30-5."

SUBPART 180.25—LIFE PRESERVERS

3. Section 180.25-15 (a) is corrected by changing a reference from "§ 185.35-5" to "§ 185.30-5."

SUBPART 180.30—RING LIFE BUOYS AND WATER LIGHTS

4. Section 180.30-5 (a) is amended to read as follows:

§ 180.30-5 *Number and size required.* (a) All vessels shall be fitted with one ring life buoy of not less than 24 inches in diameter, except that vessels less than 26 feet in length may use one ring life buoy of not less than 20 inches in diameter.

(Sec. 3, 70 Stat. 152, 153; 46 U. S. C. 390b)

PART 181—FIRE PROTECTION EQUIPMENT

SUBPART 181.05—FIRE EXTINGUISHING EQUIPMENT REQUIRED

1. Section 181.05-5 (a) is amended to read as follows:

§ 181.05-5 *Fire main system.* (a) Power driven fire pumps, hydrants, hose, and nozzles shall be installed on all mechanically propelled vessels which are ferry vessels or which carry more than 49 passengers. The arrangement and details of the fire main system shall be as set forth in Subpart 181.10.

2. Section 181.05-10 (a) (1) is amended to read as follows:

§ 181.05-10 *Fixed fire extinguishing systems.* (a) . . .

(1) In the machinery and fuel tank spaces of all vessels using fuel having a flash point of 110° F. or lower, except that where machinery and fuel tank spaces are so open to the atmosphere as to make the use of a fixed system ineffective, no such system will be required.

SUBPART 181.10—FIRE MAIN SYSTEM, DETAILS

3. Section 181.10-1 (a) is amended to read as follows:

§ 181.10-1 *Application.* (a) The provisions of this subpart shall apply to installations on all vessels contracted for on or after June 1, 1958. Installations on vessels contracted for prior to that date shall meet the requirements of this subpart insofar as deemed reasonable and practicable by the Officer in Charge, Marine Inspection.

4. Section 181.10-5 is amended to read as follows:

§ 181.10-5 *Power fire pumps.* (a) The power fire pump shall be self-priming and of such size as to discharge an effective stream from a hose connected to the highest outlet.

(b) The power fire pump may be driven off the propulsion engine or other source of power and shall be connected to the fire main. This pump may also be connected to the bilge system so that it can serve as either a fire pump or bilge pump.

SUBPART 181.20—PORTABLE FIRE EXTINGUISHERS

5. In § 181.20-5 *Number required and location*, paragraph (a) is amended by revising footnote 1 in Table 181.20-5 (a) (referred to in second column) to read as follows:

¹ Note that a fixed carbon dioxide fire extinguishing system is required in the machinery and fuel tank spaces of most vessels using fuel having a flash point of 110° F. or lower (see § 181.05-10).

(Sec. 3, 70 Stat. 152, 153; 46 U. S. C. 390b)

PART 182—MACHINERY INSTALLATION

SUBPART 182.01—APPLICATION

1. Section 182.01-20 is amended to read as follows:

§ 182.01-20 *All vessels having pressure vessels.* (a) Auxiliary boilers and unfired pressure vessels and their associated piping and fittings on all vessels shall comply with the applicable parts of Subchapter F (Marine Engineering) of this chapter except as otherwise provided in § 176.15-30 (a) (9) of this subchapter.

2. Subpart 182.01 is amended by adding a new section thereto, reading as follows:

§ 182.01-25 *Special consideration.* (a) Special consideration may be given to departures from the specific requirements of this part when it can be shown that special circumstances concerning the vessel's route, construction, arrangement, trade or operation warrant such departures.

SUBPART 182.10—MACHINERY INSTALLATIONS USING FUELS HAVING A FLASH POINT OF 110° F. OR LOWER (GASOLINE, ETC.)

3. Section 182.10-20 (a) (7) is amended to read as follows:

§ 182.10-20 *Fuel tanks.* (a) *Materials and construction.* . . .

(7) All tanks exceeding 30 inches in any horizontal dimension shall be fitted with vertical baffle plates at intervals not exceeding 30 inches. Baffle plates

shall be of the same material and not less than the minimum thickness required in the tank walls and shall be connected to the tank walls by welding or brazing.

SUBPART 182.15—MACHINERY INSTALLATIONS USING FUELS HAVING A FLASH POINT OF OVER 110° F. (DIESEL OIL, ETC.)

4. Section 182.15-5 (b) (1) is amended to read as follows:

§ 182.15-5 *Machinery.* . . .
(b) *Auxiliary machinery.* (1) The auxiliary machinery requirements of § 182.10-5 (b) shall apply to diesel auxiliary engine installations except that air cooled diesel auxiliary engines may be installed under deck when adequate compartment ventilation is provided and other necessary safeguards are taken so as not to endanger the vessel.

SUBPART 182.20—BILGE SYSTEM

5. Section 182.20-1 *Application* is amended by deleting paragraph (b).

6. Section 182.20-5 is amended by revising paragraphs (b) and (c) to read as follows:

§ 182.20-5 *Bilge piping.* . . .

(b) All vessels of 26 feet in length and over shall be provided with individual bilge lines and bilge suction for each water-tight compartment. The bilge pipe shall be not less than one inch inside pipe size and the bilge suction shall be fitted with suitable strainers having an open area not less than three times the area of the bilge pipe.

(c) The individual bilge suction lines shall be led to a manifold which shall be provided with stop-check valves for controlling bilge suction from the various compartments. The combination of a stop valve and a check valve may be substituted for the stop-check valve.

7. Section 182.20-10 is amended to read as follows:

§ 182.20-10 *Bilge pumps.* (a) All vessels shall be provided with a hand portable fire and bilge pump having a capacity of not less than 5 gallons per minute. The suction and discharge ends of this pump shall be provided with hoses suitable for pumping bilges and for use in fire fighting.

(b) All vessels of 26 feet in length and over shall be provided with a hand operated or power operated bilge pump in addition to the hand portable pump. This pump shall be permanently connected to the bilge main and, except as otherwise provided in this paragraph, shall have a capacity of not less than 10 gallons per minute.

(1) All mechanically propelled vessels of 26 feet in length and over which are ferry vessels or which carry more than 49 passengers shall be provided with a self priming power bilge pump in addition to the hand portable pump. This pump shall have a capacity of not less than 25 gallons per minute and shall be permanently connected to the bilge main.

(2) A power bilge pump may be driven off the main engine or other source of power. It may be connected to the fire main and, if of sufficient capacity, may

serve as the fire pump required by § 181.05-5 (a).

(Sec. 3, 70 Stat. 152, 153; 46 U. S. C. 390b)

PART 183—ELECTRICAL INSTALLATION

SUBPART 183.01—APPLICATION

1. Section 183.01-1 is amended to read as follows:

§ 183.01-1 *Electrical installations operating at potentials of 50 volts and over.* (a) Electrical installations operating at potentials of 50 volts or more and on vessels contracted for on or after June 1, 1958, shall comply with the applicable parts of Subchapter J (Electrical Engineering) of this chapter. Electrical installations on vessels contracted for prior to that date shall meet the applicable regulations in Subchapter J insofar as is deemed reasonable and practicable by the Officer in Charge, Marine Inspection.

2. Section 183.01-5 is amended to read as follows:

§ 183.01-5 *Electrical installations operating at potentials of less than 50 volts.* (a) Electrical installations operating at potentials of less than 50 volts and on vessels contracted for on or after June 1, 1958, shall comply with the provisions of this part. Electrical installations on vessels contracted for prior to that date shall meet the requirements of this subpart insofar as deemed reasonable and practicable by the Officer in Charge, Marine Inspection.

SUBPART 183.05—GENERAL

3. Section 183.05-5 (a) is amended to read as follows:

§ 183.05-5 *Name plates.* (a) Each generator, motor and other major items of power equipment shall be provided with a name plate indicating the maker's name, its rating in volts and amperes or in volts and watts and when intended for connection to a normally grounded supply, the grounding polarity.

SUBPART 183.10—EQUIPMENT

4. Section 183.10-5 (c) is amended to read as follows:

§ 183.10-5 *Switchboards.* (c) Each ungrounded conductor of circuit supplying lights, motors or appliances shall be equipped with a circuit breaker or switch and fuses at the point of attachment to the power source. This applies also to added circuits.

(Sec. 3, 70 Stat. 152, 153; 46 U. S. C. 390b)

PART 187—LICENSING

SUBPART 187.01—GENERAL

1. Section 187.01-1 (a) is amended to read as follows:

§ 187.01-1 *Application.* (a) The regulations in this part apply to all applicants for license to operate mechanically propelled vessels of less than 100 gross tons and not more than 65 feet in length carrying more than six passengers, and to all applicants for license to operate sail vessels or non-self-propelled vessels,

of less than 100 gross tons carrying more than six passengers.

SUBPART 187.05—GENERAL REQUIREMENTS

2. Section 187.05-1 is amended by changing the reference in paragraph (a) from "8 U. S. C. 801" to "8 U. S. C. 1481"; and by revising paragraph (e) and by adding a new paragraph (f), which read as follows:

§ 187.05-1 *Issuance of licenses.* * * *

(e) Every person who receives a license shall make oath before an Officer in Charge, Marine Inspection, or commissioned officer of the Coast Guard authorized to administer oaths under 50 U. S. C. 732, to be recorded upon his official file, that he will faithfully and honestly according to his best skill and judgment, without concealment or reservation, perform all the duties required of him by law.

(f) An applicant for an operator's license must demonstrate his ability to speak, read and understand English as found in the pilot rules, aids to navigation publications, emergency equipment instructions and machinery instructions.

(1) An applicant for an operator's license to operate vessels on the navigable waters of the United States in the vicinity of Puerto Rico, who speaks Spanish only, will be issued a license restricted to those waters.

3. Section 187.05-5 (a) is amended to read as follows:

§ 187.05-5 *Sea service as member of Armed Forces of the United States and on vessels owned by the United States as qualifying experience.* (a) Sea service as member of the Armed Forces of the United States will be accepted as qualifying experience for an original or extension of route of license. Such service will be subject to evaluation by the Officer in Charge, Marine Inspection, to determine its equivalence to the sea service required on passenger motorboats, and to determine the appropriate class and limit of license for which the applicant is eligible.

SUBPART 187.10—ORIGINAL LICENSE

4. Section 187.10-15 (c) is amended in the first sentence by changing the phrase "at least" to "at least."

5. Section 187.10-25 is amended by adding new paragraphs (c) and (d), reading as follows:

§ 187.10-25 *Professional examination.* * * *

(c) Examination required for license as operator on waters other than ocean and coastwise is contained in Subpart 187.20. Examination in Rules of the Road is for waters upon which the applicant is operating, but it will be incumbent upon every applicant, should he at any time operate on waters for which the Rules of the Road differ, to familiarize himself with the appropriate Rules.

(d) Examination required for license as operator on limited ocean or coastwise routes is contained in Subpart 187.25. Examination is required in International and Inland Rules of the Road, but it will be incumbent upon every applicant, should he at any time

operate on waters for which the Rules of the Road differ, to familiarize himself with the appropriate Rules.

6. Section 187.10-30 is amended by revising paragraphs (a) and (b) to read as follows:

§ 187.10-30 *Character check and references.* (a) The Officer in Charge, Marine Inspection, shall require every applicant for an original license to have written endorsement of three reputable persons to whom he is known, and if the documentary evidence of experience indicates service with a master or operator, one of the three endorsements shall be from that source, if it can be obtained. However, endorsements need not be required, at the discretion of the Officer in Charge, Marine Inspection, when an applicant holds a currently valid license.

(b) Fingerprint records shall be submitted to the Commandant on each applicant at the time application for license is made, except when an applicant holds a currently valid license fingerprint records need not be submitted. The application of any person may be rejected by the District Commander or his authorized representative when derogatory information has been brought to his attention which indicates that the applicant's habits of life and character are such as to warrant the belief that he cannot be entrusted with the duties and responsibilities of the station for which he made application. In the event that an applicant is rejected he shall be advised that he may submit a request to the Commandant for a review of his case. No examination shall be given or temporary permit issued in this type case pending the Commandant's authorization.

SUBPART 187.15—RENEWAL OF LICENSES

7. Section 187.15-5 (a) (2) is amended to read as follows:

§ 187.15-5 *Application for renewal.* (a) * * *

(2) The oath of office on the form prescribed by the Coast Guard, which has been duly executed before a person authorized to administer oaths.

8. Section 187.15-25 is amended to read as follows:

§ 187.15-25 *Reissue of expired license.* (a) Whenever an applicant shall apply for renewal of his license for the same grade, after 12 months after the date of its expiration, he shall be required to pass an examination for the same grade of license of such length and scope as will, in the judgment of the Officer in Charge, Marine Inspection, be sufficient to demonstrate adequately the continued professional knowledge of the examinee, except that no professional examination will be required provided the license expired during the time of the holder's service with the Armed Forces or the Merchant Marine and there was no reasonable opportunity for renewal. The Officer in Charge, Marine Inspection, may require a written examination for this purpose.

(b) The renewed license shall receive the next higher number of issue of present grade.

SUBPART 187.20—SPECIFIC REQUIREMENTS FOR OPERATORS ON OTHER THAN OCEAN AND COASTWISE WATERS

9. Section 187.20-1 (a) is amended to read as follows:

§ 187.20-1 *General application.* (a) The regulations in this subpart are for operators' licenses for service on waters other than ocean or coastwise.

10. Section 187.20-10 *Examination for operators of mechanically propelled vessels* is amended by deleting paragraph (b). (Revised wording of this paragraph is transferred to § 187.10-25 (c).)

SUBPART 187.25—SPECIFIC REQUIREMENTS FOR OCEAN OPERATORS

11. Section 187.25-1 is amended by deleting paragraph (d); by renumbering paragraphs (e) and (f) to (d) and (e), respectively; and by amending paragraph (a) to read as follows:

§ 187.25-1 *General application—(a) Vessels' routes.* The regulations in this subpart are for operators' licenses for limited ocean and coastwise service on routes not to exceed 100 miles offshore between such limits as determined by the Office in Charge, Marine Inspection.

12. Section 187.25-5 (a) (2) is amended to read as follows:

§ 187.25-5 *Service requirements, mechanically propelled vessels.* (a) * * *

(2) Four years' deck department service in the operation of ocean or coastwise motorboats or small motor vessels.

13. Section 187.25-10 (a) is amended by revising the introductory sentence (but not the subparagraphs) to read as follows:

§ 187.25-10 *Service requirements, sail propelled vessels.* (a) The minimum service required to qualify an applicant for examination for a license as operator of sail propelled vessels in ocean service is:

14. Section 187.25-15 (a) is amended by revising the introductory sentence (but not the subparagraphs) to read as follows:

§ 187.25-15 *Examination for operator of ocean mechanically propelled vessels.* (a) An applicant for a license as operator of ocean mechanically propelled vessels shall be required to pass a satisfactory examination as to his knowledge of the subjects listed in this section:

15. Section 187.25-25 (a) is amended by revising the first two sentences (but not the subparagraphs) to read as follows:

§ 187.25-25 *Additional routes.* (a) A licensed operator of mechanically or sail propelled ocean vessels who applies for an endorsement to his license of an additional route which embraces additional navigational hazards may be required, at the discretion of the Officer in Charge,

Marine Inspection, having jurisdiction over the requested route, to show service on the waters for which the endorsement is requested. However, applicants shall not be required to show more than 3 months' service, or 12 trips within one year. Each applicant for endorsement of an additional route on his license shall be examined on the following subjects by the Officer in Charge, Marine Inspection, having jurisdiction over the requested route, except that examination on International and Inland Rules of the Road shall be required not more than once a year:

(Sec. 3, 70 Stat. 152, 153; 46 U. S. C. 390b)

Dated: April 22, 1958.

[SEAL] J. A. HIRSHFIELD,
Rear Admiral, U. S. Coast Guard,
Acting Commandant.

[F. R. Doc. 58-3105; Filed, Apr. 25, 1958;
8:46 a. m.]

TITLE 49—TRANSPORTATION

Chapter I—Interstate Commerce Commission

PART 9—AWARD OF LIFE-SAVING MEDALS UNDER THE MEDALS OF HONOR ACT

CROSS REFERENCE: For regulations governing the award of life-saving medals under the Medals of Honor Act, constituting §§ 9.1 through 9.7, see Executive Order 10765, *supra*.

PROPOSED RULE MAKING

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[26 CFR (1954) Part 1]

INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

ITEMS NOT DEDUCTIBLE; NOTICE OF HEARING

Proposed regulations under sections 261, 262, 263, 265, 266 and 273 of the Internal Revenue Code of 1954, relating to certain items not deductible in computing taxable income, were published in the issue of the FEDERAL REGISTER for Wednesday, March 19, 1958 (23 F. R. 1829), with a notice of proposed rule making. In response to this notice of proposed rule making, one or more interested parties have submitted comments and suggestions pertaining to the proposed regulations, and have requested an opportunity to comment orally at a public hearing on the proposed regulations.

Notice is hereby given that a public hearing on these proposed regulations will be held on Tuesday, May 13, 1958, at 10:00 a. m., e. d. s. t., in Room 3313, Internal Revenue Building, 12th and Constitution Avenue NW., Washington, D. C. All interested persons who plan to attend the hearing are requested to so notify the Commissioner of Internal Revenue, Attention: T.P., Washington

25, D. C., at least three days prior to the date fixed for the hearing.

[SEAL] JOHN W. S. LITTLETON,
Director, Technical Planning Division, Internal Revenue Service.

[F. R. Doc. 58-3123; Filed, Apr. 25, 1958;
8:51 a. m.]

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[7 CFR Part 51]

UNITED STATES STANDARDS FOR PEACHES¹

NOTICE OF PROPOSED RULE MAKING

Notice is hereby given that the United States Department of Agriculture is considering the revision of United States Standards for Peaches (7 CFR 51.1210 to 51.1223) pursuant to the authority contained in the Agricultural Marketing Act of 1946 (60 Stat. 1087 et seq., as amended; 7 U. S. C. 1621 et seq.).

All persons who desire to submit written data, views or arguments for consideration in connection with the proposed standards should file the same with the

¹ Packing of the product in conformity with the requirements of these standards shall not excuse failure to comply with the provisions of the Federal Food, Drug, and Cosmetic Act.

Chief, Fresh Products Standardization and Inspection Branch, Fruit and Vegetable Division, Agricultural Marketing Service, United States Department of Agriculture, South Building, Washington 25, D. C., not later than May 15, 1958. The proposed standards are as follows:

GRADES	
Sec.	
51.1210	U. S. Fancy.
51.1211	U. S. Extra No. 1.
51.1212	U. S. No. 1.
51.1213	U. S. No. 2.
UNCLASSIFIED	
51.1214	Unclassified.
APPLICATION OF TOLERANCES	
51.1215	Application of tolerances.
MARKING	
51.1216	Marking.
SIZE	
51.1217	Size.
STANDARD PACK	
51.1218	Standard pack.
DEFINITIONS	
51.1219	Well matured.
51.1220	Mature.
51.1221	Well formed.
51.1222	Limb rub injury.
51.1223	Damage.
51.1224	Serious Damage.
51.1225	Diameter.
51.1226	Badly misshapen.

AUTHORITY: §§ 51.1210 to 51.1226 issued under sec. 205, 60 Stat. 1090, as amended; 7 U. S. C. 1624.

GRADES

§ 51.1210 *U. S. Fancy*. "U. S. Fancy" consists of peaches of similar varietal characteristics which are mature but not soft or overripe, which are well formed and free from decay, growth cracks, bacterial spot, cuts which are not healed, scab, scale, split pits, worms, worm holes, limb rub injury and free from damage caused by hail marks, bruises, dirt or other foreign material, other disease, insects or mechanical or other means.

(a) Each peach shall have not less than one-third of its surface showing blushed, pink or red color.

(b) At least 75 percent of the peaches in the container shall be well matured.

(c) Tolerances: In order to allow for variations incident to proper grading and handling, the following tolerances, by count, shall be permitted (See § 51.1215):

(1) *Color*. 10 percent for peaches in any lot which fail to meet the color requirements;

(2) *Maturity*. Individual packages may have not less than 60 percent of peaches which are well matured: *Provided*, That the entire lot averages not less than 75 percent well matured; and,

(3) *Defects*. 10 percent in any lot for peaches which fail to meet the requirements of the grade, but not more than one-half of this amount, or 5 percent, shall be allowed for immature peaches or other serious damage, including therein not more than 1 percent for decay at shipping point: *Provided*, That en route or at destination an additional tolerance of 2 percent shall be permitted for peaches which are soft, overripe, seriously damaged by bruising or affected by decay.

§ 51.1211 *U. S. Extra No. 1*. "U. S. Extra No. 1" consists of peaches of similar varietal characteristics which are mature but not soft or overripe, which are well formed and free from decay, growth cracks, cuts which are not healed, worms, worm holes, and free from damage caused by limb rubs, hail marks, bruises, dirt or other foreign material, bacterial spot, scab, scale, split pits, other disease, insects or mechanical or other means.

(a) At least 50 percent of the peaches in the container shall have not less than one-fourth of their surface covered with blushed, pink or red color, except that peaches may be designated as "U. S. Extra No. 1 High Color": *Provided*, That all requirements of the U. S. Extra No. 1 grade are met and at least 60 percent of the peaches in the container have not less than one-third of their surface covered with blushed, pink or red color.

(b) Peaches in any lot shall be mature except that peaches may be designated as "U. S. Extra No. 1 Well Matured": *Provided*, That all requirements of the U. S. Extra No. 1 grade are met and at least 75 percent of the peaches in the container are well matured.

(c) Tolerances: In order to allow for variations incident to proper grading and handling, the following tolerances, by count, shall be permitted (See § 51.1215):

(1) *Color*. Individual containers may have not less than the 40 percent of peaches having one-fourth of their surface covered with blushed, pink or red color: *Provided*, That the entire lot averages not less than 50 percent having this amount of color: *And provided further*, That when peaches are designated as "U. S. Extra No. 1 High Color", individual containers may have not less than 50 percent of peaches having one-third of their surface covered with blushed, pink or red color: *Provided*, That the lot averages not less than 60 percent having this amount of color;

(2) *Maturity*. When peaches are designated as "U. S. Extra No. 1 Well Matured", individual packages may have not less than 60 percent of peaches which are well matured: *Provided*, That the entire lot averages not less than 75 percent well matured; and,

(3) *Defects*. 10 percent in any lot for peaches which fail to meet the requirements of the grade, but not more than one-half of this amount, or 5 percent, shall be allowed for immature peaches or other serious damage, including therein not more than 1 percent for decay at shipping point: *Provided*, That en route or at destination an additional tolerance of 2 percent shall be permitted for peaches which are soft, overripe, seriously damaged by bruising or affected by decay.

§ 51.1212 *U. S. No. 1*. "U. S. No. 1" consists of peaches of similar varietal characteristics which are mature but not soft or overripe, which are well formed, and free from decay, growth cracks, cuts which are not healed, worms, worm holes, and free from damage caused by limb rubs, hail marks, bruises, dirt or other foreign material, bacterial spot, scab, scale, split pits, other disease, insects or mechanical or other means.

(a) Peaches in any lot shall be mature except that peaches may be designated as "U. S. No. 1 Well Matured": *Provided*, That all requirements of the U. S. No. 1 grade are met and at least 75 percent of the peaches in the container are well matured.

(b) Tolerances: In order to allow for variations incident to proper grading and handling, the following tolerances, by count, shall be permitted (See § 51.1215):

(1) *Maturity*. When peaches are designated as "U. S. No. 1 Well Matured", individual packages may have not less than 60 percent of the peaches which are well matured: *Provided*, That the entire lot averages not less than 75 percent well matured; and,

(2) *Defects*. 10 percent in any lot for peaches which fail to meet the requirements of the grade, but not more than one-half of this amount, or 5 percent, shall be allowed for immature peaches or other serious damage, including therein not more than 1 percent for decay at shipping point: *Provided*, That en route or at destination an additional tolerance of 2 percent shall be permitted for peaches which are soft, overripe, seriously damaged by bruising or affected by decay.

§ 51.1213 *U. S. No. 2*. "U. S. No. 2" consists of peaches of similar varietal

characteristics which are mature but not soft or overripe, which are not badly misshapen, which are free from decay, cuts which are not healed, worms, worm holes, and free from serious damage caused by limb rubs, hail marks, growth cracks, bruises, dirt or other foreign material, bacterial spot, scab, scale, split pits, other disease, insects or mechanical or other means.

(a) Peaches in any lot shall be mature except that peaches may be designated as "U. S. No. 2 Well Matured": *Provided*, That all requirements of the U. S. No. 2 grade are met and at least 75 percent of the peaches in the container are well matured.

(b) Tolerances: In order to allow for variations incident to proper grading and handling, the following tolerances, by count, shall be permitted (See § 51.1215):

(1) *Maturity*. When peaches are designated as "U. S. No. 2 Well Matured", individual packages may have not less than 60 percent of the peaches which are well matured: *Provided*, That the entire lot averages not less than 75 percent well matured; and,

(2) *Defects*. 10 percent in any lot for peaches which are immature or which fail to meet the remaining requirements of the grade, but not more than one-tenth of this amount, or 1 percent, shall be allowed for decay at shipping point: *Provided*, That en route or at destination an additional tolerance of 2 percent shall be permitted for peaches which are soft, overripe, seriously damaged by bruising or affected by decay.

UNCLASSIFIED

§ 51.1214 *Unclassified*. "Unclassified" consists of peaches which have not been classified in accordance with any of the foregoing grades. The term "unclassified" is not a grade within the meaning of these standards but is provided as a designation to show that no grade has been applied to the lot.

APPLICATION OF TOLERANCES

§ 51.1215 *Application of tolerances*. (a) The contents of individual packages in the lot, based on sample inspection, are subject to the following limitations: *Provided*, That the averages for the entire lot are within the tolerances specified for the grade:

(1) For packages which contain more than 10 pounds, and a tolerance of 10 percent or more is provided, individual packages in any lot shall have not more than one and one-half times the tolerance specified. For packages which contain more than 10 pounds, and a tolerance of less than 10 percent is provided, individual packages in any lot shall have not more than double the tolerance specified, except that at least one defective and one off-size specimen may be permitted in any package; and,

(2) For packages which contain 10 pounds or less, individual packages in any lot are not restricted as to the percentage of defects or off-size: *Provided*, That not more than one peach which is seriously damaged by insects or bruises, or which is soft, overripe or affected by decay may be permitted in any package.

MARKING

§ 51.1216 *Marking.* (a) The minimum diameter or numerical count of the peaches packed in a closed container should be plainly stamped, stenciled or otherwise marked on the container.

(b) When the minimum diameter is shown it should be in terms of whole inches, whole and quarter inches, or whole and eighth inches; for example, as 2 inches minimum, $2\frac{1}{4}$ inches minimum or $1\frac{3}{8}$ inches minimum. The minimum and maximum diameters both may be stated as $1\frac{3}{8}$ to 2 inches, or 2 to $2\frac{1}{4}$ inches.

SIZE

§ 51.1217 *Size.* (a) When the size of peaches is designated by count, the number of peaches in the package shall not vary more than 4 from the count indicated on the package.

(1) Not more than 10 percent of the packages in any lot may fail to meet this requirement.

(b) When the size of peaches is designated in terms of minimum diameter or minimum and maximum diameter the following tolerances shall be permitted:

(1) 10 percent in any lot for peaches which are smaller than the minimum diameter specified and 15 percent for peaches which are larger than any specified maximum diameter.

STANDARD PACK

§ 51.1218 *Standard pack.* (a) Each container shall be packed so that the peaches in the shown face shall be reasonably representative in size, color and quality of the contents of the package.

(b) Baskets: Peaches packed in U. S. Standard bushel baskets, three-fourths bushel baskets, or half-bushel baskets shall be ring-faced and tightly packed with sufficient bulge to prevent any appreciable movement of the peaches within the containers when lidded.

(c) Boxes: (1) Peaches packed in standard western boxes shall be reasonably uniform in size and arranged in the containers according to the approved and recognized methods. Each wrapped peach shall be fairly well enclosed by its individual wrapper. All containers shall be well filled and tightly packed but the contents shall not show excessive or unnecessary bruising because of over-filled packages. The number of peaches in the box shall not vary more than 4 from the count indicated on the box.

(2) Peaches packed in other type boxes such as wire-bound boxes and fibre-board boxes may be place packed, or jumble packed faced, and all containers shall be well filled.

(3) Peaches packed in containers equipped with cell compartments or molded trays or paper cups shall be of the proper size for the cells, molds or cups in which they are packed.

(d) Tolerances: In order to allow for variations incident to proper packing, not more than 10 percent of the packages in any lot may not meet these requirements.

DEFINITIONS

§ 51.1219 *Well matured.* "Well matured" means peaches which (a) are not

hard; (b) have shoulders and sutures well filled out; (c) have skin yellowish-green to yellow; (d) when cut, have flesh which is yellowish-green to yellow except that it is red next to the pit and, in case of freestone varieties, have flesh which separates readily and cleanly from the pit. (Not hard means that the peach yields to moderate pressure at least slightly at the suture and tip, and at least very slightly elsewhere.)

§ 51.1220 *Mature.* "Mature" means that the peach has reached the stage of growth which will insure a proper completion of the ripening process.

§ 51.1221 *Well formed.* "Well formed" means that the shape of the peach may be slightly irregular but not to the extent that its appearance is materially affected.

§ 51.1222 *Limb rub injury.* "Limb rub injury" means that the scarring is not smooth, not light colored, and when the aggregate area exceeds that of a circle one-fourth inch in diameter on a peach $2\frac{1}{4}$ inches in diameter, or correspondingly smaller or greater areas of scars on smaller or larger peaches, respectively.

§ 51.1223 *Damage.* "Damage", unless otherwise specifically defined in this section, means any defect which materially affects the appearance, or the edible or shipping quality of the peach. Any one of the following defects, or any combination of defects the seriousness of which exceeds the maximum allowed for any one defect, shall be considered as damage:

NOTE: Limitations for blemishes are based on a $2\frac{1}{4}$ -inch peach. Correspondingly smaller or greater areas shall be permitted on smaller or larger peaches, respectively.

(a) Bacterial spot and scab when cracked, or when the aggregate area exceeds that of a circle one-fourth inch in diameter;

(b) Scale when concentrated, or when scattered and the aggregate area exceeds that of a circle one-fourth inch in diameter;

(c) Hall marks which are unhealed, deep, or when the aggregate area exceeds that of a circle one-fourth inch in diameter;

(d) Limb rubs when not smooth, when not light colored, or when the aggregate area exceeds that of a circle one-half inch in diameter; and,

(e) Split pit when causing any unhealed crack, when causing any crack which is readily apparent, or when affecting shape to the extent that the fruit is not well formed.

§ 51.1224 *Serious damage.* "Serious damage", unless otherwise specifically defined in this section, means any defect which seriously affects the appearance, or the edible or shipping quality of the peach. Any one of the following defects, or any combination of defects the seriousness of which exceeds the maximum allowed for any one defect, shall be considered as serious damage:

NOTE: Limitations for blemishes are based on a $2\frac{1}{4}$ -inch peach. Correspondingly smaller or greater areas shall be permitted on smaller or larger peaches, respectively.

(a) Bacterial spot when any crack is not well healed, or when the aggregate area exceeds that of a circle three-fourths inch in diameter;

(b) Scab when cracked, or when healed and the aggregate area exceeds that of a circle 1 inch in diameter;

(c) Scale when the aggregate area exceeds that of a circle one-half inch in diameter;

(d) Growth cracks when unhealed, or when more than one-half inch in length;

(e) Hall marks when unhealed, or shallow hall marks when the aggregate area exceeds that of a circle three-fourths inch in diameter, or deep hall marks when seriously deforming the fruit or when the aggregate area exceeds that of a circle one-half inch in diameter;

(f) Limb rubs when smooth and light colored and the aggregate area exceeds that of a circle $1\frac{1}{2}$ inches in diameter, or dark or slightly rough and barklike scars when the aggregate area exceeds that of a circle three-fourths inch in diameter;

(g) Split pit when causing any unhealed crack, or when healed and the aggregate area exceeds that of a circle one-half inch in length, including any part of the crack which may be covered by the stem;

(h) Immature, soft or overripe peaches; and,

(i) Wormy fruit or worm holes.

§ 51.1225 *Diameter.* "Diameter" means the shortest distance measured through the center of the peach at right angles to a line running from the stem to the blossom end.

§ 51.1226 *Badly misshapen.* "Badly misshapen" means that the peach is so decidedly deformed that its appearance is seriously affected.

Dated: April 23, 1958.

[SEAL] ROY W. LENNARTSON,
Deputy Administrator,
Marketing Services.

[P. R. Doc. 58-3134; Filed, Apr. 25, 1958;
8:53 a. m.]

[7 CFR Part 51]

UNITED STATES STANDARDS FOR
NECTARINES¹

NOTICE OF PROPOSED RULE MAKING

Notice is hereby given that the United States Department of Agriculture is considering the revision of United States Standards for Nectarines pursuant to the authority contained in the Agricultural Marketing Act of 1946 (60 Stat. 1087 et seq., as amended; 7 U. S. C. 1621 et seq.).

All persons who desire to submit written data, views or arguments for consideration in connection with the proposed standards should file the same with the Chief, Fresh Products Standardization and Inspection Branch, Fruit and Vegetable Division, Agricultural Market-

¹Packing of the product in conformity with the requirements of these standards shall not excuse failure to comply with the provisions of the Federal Food, Drug, and Cosmetic Act.

ing Service, United States Department of Agriculture, South Building, Washington 25, D. C., not later than May 19, 1958.

The proposed standards are as follows:

GRADES	
Sec.	
51.3145	U. S. Fancy.
51.3146	U. S. Extra No. 1.
51.3147	U. S. No. 1.
51.3148	U. S. No. 2.

UNCLASSIFIED	
51.3149	Unclassified.

TOLERANCES	
51.3150	Tolerances.

APPLICATION OF TOLERANCES	
51.3151	Application of tolerances.

STANDARD PACK	
51.3152	Standard pack.

DEFINITIONS	
51.3153	Mature.
51.3154	Well formed.
51.3155	Clean.
51.3156	Injury.
51.3157	Damage.
51.3158	Badly misshapen.
51.3159	Serious damage.

AUTHORITY: §§ 51.3145 to 51.3159 issued under sec. 205, 60 Stat. 1090, as amended; 7 U. S. C. 1624.

GRADES

§ 51.3145 *U. S. Fancy*. "U. S. Fancy" consists of nectarines of one variety which are mature but not soft or over-ripe, which are well formed, clean, and free from decay, broken skins which are not healed, worms, worm holes, and free from injury caused by bruises, growth cracks, hail, sunburn, sprayburn, scab, bacterial spot, scale, split pits, scars, russeting, other disease, insects, or mechanical or other means.

(a) In the case of the John River variety each nectarine shall show some blushed or red color. In the case of other varieties each nectarine shall have not less than one-third of its surface showing red color characteristic of the variety. (See § 51.3150.)

§ 51.3146 *U. S. Extra No. 1*. "U. S. Extra No. 1" consists of nectarines of one variety which are mature but not soft or over-ripe, which are well formed, clean, and free from decay, broken skins which are not healed, worms, worm holes, and free from damage caused by bruises, growth cracks, hail, sunburn, sprayburn, scab, bacterial spot, scale, split pit, scars, russeting, other disease, insects, or mechanical or other means.

(a) In the case of the John River variety at least 50 percent of the nectarines in any lot shall show some blushed or red color. In the case of other varieties at least 75 percent of the nectarines in any lot shall show some blushed or red color including therein at least 50 percent of the nectarines with not less than one-third of the fruit surface showing red color characteristic of the variety. (See § 51.3150.)

§ 51.3147 *U. S. No. 1*. "U. S. No. 1" consists of nectarines of one variety which are mature but not soft or over-ripe, which are well formed, clean, and free from decay, broken skins which are not healed, worms, worm holes, and free

from damage caused by bruises, growth cracks, hail, sunburn, sprayburn, scab, bacterial spot, scale, split pits, scars, russeting, other disease, insects, or mechanical or other means.

(a) At least 75 percent of the nectarines in any lot shall show some blushed or red color, except that there are no color requirements for nectarines of the John River variety in this grade. (See § 51.3150.)

§ 51.3148 *U. S. No. 2*. "U. S. No. 2" consists of nectarines of one variety which are mature but not soft or over-ripe, which are not badly misshapen, which are clean and free from decay, broken skins which are not healed, worms, worm holes, and free from serious damage caused by bruises, growth cracks, hail, sunburn, sprayburn, scab, bacterial spot, scale, split pits, scars, russeting, other disease, insects, or mechanical or other means.

(a) There are no color requirements for nectarines in this grade. (See § 51.3150.)

UNCLASSIFIED

§ 51.3149 *Unclassified*. "Unclassified" consists of nectarines which have not been classified in accordance with any of the foregoing grades. The term "unclassified" is not a grade within the meaning of these standards but is provided as a designation to show that no grade has been applied to the lot.

TOLERANCES

§ 51.3150 *Tolerances*. In order to allow for variations incident to proper grading and handling in each of the foregoing grades, the following tolerances, by count, are provided as specified:

(a) *U. S. Fancy, U. S. Extra No. 1 and U. S. No. 1 grades*—(1) *For defects*. 10 percent for nectarines in any lot which fail to meet the requirements of the specified grade: *Provided*, That not more than one-half of this amount, or 5 percent, shall be allowed for defects causing serious damage, including in this latter amount not more than 1 percent for nectarines affected by decay.

(2) *For color*—(i) *U. S. Fancy grade*. 10 percent for nectarines in any lot which fail to meet the requirements of the grade.

(ii) *U. S. Extra No. 1 grade*. In the case of the John River variety individual containers may have not less than 40 percent of the nectarines showing some blushed or red color: *Provided*, That the entire lot averages not less than 50 percent of the nectarines showing this color. In the case of other varieties individual containers may have not less than 65 percent of the nectarines showing some blushed or red color including therein not less than 40 percent of the nectarines having at least one-third of the fruit surface showing red color characteristic of the variety: *Provided*, That the entire lot averages not less than 75 percent of the nectarines showing some blushed or red color, including therein not less than 50 percent of the nectarines having at least one-third of the fruit surface showing red color characteristic of the variety.

(iii) *U. S. No. 1 grade*. Except for the John River variety individual containers may have not less than 65 percent of the nectarines showing some blushed or red color: *Provided*, That the entire lot averages not less than 75 percent of the nectarines showing this color.

(b) *U. S. No. 2 grade*—(1) *For defects*. 10 percent for nectarines in any lot which fail to meet the requirements of the grade: *Provided*, That not more than one-tenth of this amount, or 1 percent, shall be allowed for nectarines affected by decay.

APPLICATION OF TOLERANCES

§ 51.3151 *Application of tolerances*. (a) The contents of individual packages in the lot, based on sample inspection, are subject to the following limitations: *Provided*, That the averages for the entire lot are within the tolerances specified for the grade:

(1) For packages which contain more than 5 pounds, and a tolerance of 10 percent or more is provided, individual packages in any lot shall have not more than one and one-half times the tolerance specified. For packages which contain more than 5 pounds and a tolerance of less than 10 percent is provided, individual packages in any lot shall have not more than double the tolerance specified, except that at least one defective and one off-size specimen may be permitted in any package; and,

(2) For packages which contain 5 pounds or less, individual packages in any lot are not restricted as to the percentage of defects or off-size: *Provided*, That not more than one nectarine which is soft or affected by decay shall be permitted in any package.

STANDARD PACK

§ 51.3152 *Standard pack*. (a) Nectarines shall be fairly uniform in size and shall be packed in boxes, lugs, crates, cartons or baskets and arranged according to the approved and recognized methods. All such containers shall be tightly packed and well filled but the contents shall not show excessive or unnecessary bruising resulting from overfilling. The nectarines in the shown face shall be reasonably representative in size, color and quality of the contents of the container. Each wrapped fruit shall be fairly well enclosed by its individual wrapper.

(b) When packed in closed containers, the size shall be indicated by marking the container with the numerical count, the pack arrangement or the minimum diameter or minimum and maximum diameters in terms of inches, and not less than one-eighth fractions of inches.

(c) Boxes, lugs or cartons: Nectarines packed in containers equipped with cell compartments, molded trays, or paper cups shall be of the proper size for the cells, molds or cups in which they are packed.

(d) Four-basket crates: (1) The size of nectarines packed in four-basket crates shall be indicated as follows: 3 x 4, 3 x 4 x 4, 3 x 4 x 5, 4 x 4, etc., in accordance with the arrangement in the top layer of the basket. These packs shall not be more than three layers deep.

(2) The arrangement of the bottom layer shall be one row less one way, and may be one row less each way, than the arrangement of the top layer. The arrangement of the middle layer may be the same as the top layer or may be one row less one way than the arrangement of the top layer. Straight, offset and diagonal packs in the layers are permitted.

(e) Baskets: Nectarines packed in U. S. standard half-bushel baskets shall be ring faced and tightly packed with sufficient bulge to prevent any appreciable movement of the nectarines within the baskets when lidded.

(f) "Fairly uniform in size" means that not more than 5 percent of the nectarines vary in diameter more than is permitted for the applicable size of fruit and type of container as shown in the following table:

TABLE I

Type of container	Size	Variation permitted in diameter
Four-basket crates	All	$\frac{1}{4}$ inch.
California Peach Box	80 or smaller	$\frac{1}{4}$ inch.
Do	75 or larger	$\frac{3}{8}$ inch.
Large	85 or smaller	$\frac{1}{4}$ inch.
Do	80 or larger	$\frac{3}{8}$ inch.
Other containers	2 inches diameter or smaller	$\frac{1}{4}$ inch.
Do	Over 2 inches to 2 $\frac{1}{2}$ inches diameter	$\frac{3}{8}$ inch.
Do	Over 2 $\frac{1}{2}$ inches diameter	$\frac{1}{2}$ inch.

(1) "Diameter" means the greatest dimension measured at right angles to a line from stem to blossom end of the fruit.

(g) Tolerances: In order to allow for variations incident to proper sizing and packing, not more than 10 percent, by count, of the containers in any lot may fail to meet the requirements for standard pack.

DEFINITIONS

§ 51.3153 *Mature*. "Mature" means that the nectarine has reached the stage of growth which will insure a proper completion of the ripening process.

§ 51.3154 *Well formed*. "Well formed" means that the nectarine has the shape characteristic of the variety and that the appearance is not materially affected by bumps or other roughness.

§ 51.3155 *Clean*. "Clean" means that the fruit is practically free from dirt or other foreign material.

§ 51.3156 *Injury*. "Injury", unless otherwise specifically defined in this section, means any defect which more than slightly affects the appearance, or the edible or shipping quality of the nectarine. Any one of the following defects, or any combination of defects the seriousness of which exceeds the maximum allowed for any one defect, shall be considered as injury:

(a) Growth cracks when deep or not well healed, or when well healed and shallow and more than 1 in number or more than one-eighth inch in length;

(b) Hail when the skin has been broken or the injury is more than superficial and the aggregate area exceeds that of a circle one-fourth inch in diameter;

(c) Sunburn, or sprayburn when the normal color of the nectarine is more than slightly changed;

(d) Scab or bacterial spot when cracked or when the aggregate area exceeds that of a circle one-fourth inch in diameter;

(e) Scale when more than 1 large scale or more than three scales of any size are present;

(f) Split pit when causing any crack which is unhealed or readily apparent, or when more than slightly affecting the shape of the nectarine;

(g) Scars when not light in color, when not smooth, when having appreciable depth or when the aggregate area exceeds that of a circle one-fourth inch in diameter; and

(h) Russetting when the aggregate area exceeds 10 percent of the surface of nectarines of the Quetta variety or 5 percent of the surface of nectarines of other varieties.

§ 51.3157 *Damage*. "Damage", unless otherwise specifically defined in this section, means any defect which materially affects the appearance, or the edible or shipping quality of the nectarine. Any one of the following defects, or any combination of defects the seriousness of which exceeds the maximum allowed for any one defect, shall be considered as damage:

(a) Growth cracks when deep or not well healed, or when well healed and shallow and more than 1 in number or more than one-fourth inch in length;

(b) Hail when the skin has been broken and the injury is not well healed, or when well healed and the aggregate area exceeds that of a circle one-fourth inch in diameter, or when the injury is superficial and the aggregate area exceeds that of a circle three-eighths inch in diameter;

(c) Sunburn or sprayburn when the normal color of the nectarine is materially changed;

(d) Scab or bacterial spot when cracked or when the aggregate area exceeds that of a circle three-eighths inch in diameter;

(e) Scale when 5 or more scales are concentrated, or when scales are scattered and their aggregate area exceeds that of a circle one-fourth inch in diameter;

(f) Split pit when causing any crack which is unhealed or readily apparent, or when affecting shape to the extent that the nectarine is not well formed;

(g) Scars which exceed the following aggregate areas of different types of scars, or a combination of two or more types of scars the seriousness of which

* Areas of circles or lengths of cracks specified are applicable to a 4 x 4 size nectarine having a diameter of 2 inches. Correspondingly lesser or greater areas shall be allowed on smaller or larger nectarines.

exceeds the maximum allowed for any one type:

(1) Scars which are dark, rough or deep when the aggregate area exceeds that of a circle one-fourth inch in diameter;

(2) Scars which are fairly light in color, fairly smooth or of slight depth when the aggregate area exceeds that of a circle five-eighths inch in diameter; and

(3) Scars which are light in color, smooth and have no depth when the aggregate area exceeds that of a circle three-fourths inch in diameter;

(h) Russetting when the aggregate area exceeds 15 percent of the surface of nectarines of the Quetta variety or 10 percent of the surface of nectarines of other varieties.

§ 51.3158 *Badly misshapen*. "Badly misshapen" means that the nectarine is so decidedly deformed that its appearance is seriously affected.

§ 51.3159 *Serious damage*. "Serious damage", unless otherwise specifically defined in this section, means any defect which seriously affects the appearance, or the edible or shipping quality of the nectarine. Any one of the following defects, or any combination of defects the seriousness of which exceeds the maximum allowed for any one defect, shall be considered as serious damage:

(a) Growth cracks when deep or not well healed, or when well healed and seriously affecting the appearance or the shipping quality of the nectarine;

(b) Hail when the skin has been broken and is not well healed, or when well healed and the affected tissue extends more than one-fourth inch below the surface, or when the injury is superficial and the aggregate area exceeds that of a circle three-fourths inch in diameter;

(c) Sunburn or sprayburn when extending into the flesh or when changing the normal color on more than one-fourth of the surface of the nectarine;

(d) Scab or bacterial spot when cracked, or when the aggregate area exceeds that of a circle three-fourths inch in diameter;

(e) Scale when the aggregate area exceeds that of a circle three-eighths inch in diameter;

(f) Split pit when causing any crack which is unhealed or which is healed and distinctly open, or when seriously affecting the shape of the nectarine;

(g) Scars when more than one-fourth inch deep, or when dark or slightly rough and the aggregate area exceeds that of a circle one-half inch in diameter;

(h) Russetting when the aggregate area exceeds one-fourth of the fruit surface;

(i) Soft or overripe nectarines; and

(j) Wormy fruit or worm holes.

Dated: April 23, 1958.

[SEAL] ROY W. LENNARTSON,
Deputy Administrator,
Marketing Services.

[F. R. Doc. 58-3133; Filed, Apr. 25, 1958;
8:53 a. m.]

[7 CFR Part 974]

[Docket No. AO-176-A13]

MILK IN COLUMBUS, OHIO, MARKETING AREA

NOTICE OF HEARING ON PROPOSED AMENDMENTS TO TENTATIVE MARKETING AGREEMENT AND TO ORDER

Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U. S. C. 601 et seq.), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900), notice is hereby given of a public hearing to be held in the Virginia Hotel, Third and Gay Streets, Columbus, Ohio, beginning at 10:00 a. m., on May 14, 1958, with respect to proposed amendments to the tentative marketing agreement and to the order, regulating the handling of milk in the Columbus, Ohio, marketing area.

The public hearing is for the purpose of receiving evidence with respect to the economic and marketing conditions which relate to the proposed amendments, hereinafter set forth, and any appropriate modifications thereof, to the tentative marketing agreement and to the order.

The proposals relative to a redefinition of the marketing area raise the issue whether the provisions of the present order would tend to effectuate the declared policy of the Act, if they are applied to the marketing area as proposed to be redefined and, if not, what modifications of the provisions of the order would be appropriate.

The proposed amendments, set forth below, have not received the approval of the Secretary of Agriculture.

Proposed by the Central Ohio Milk Producers, Inc.:

1. Delete §§ 974.1 through 974.11 and substitute therefor the following:

DEFINITIONS

§ 974.1 *Act*. "Act" means Public Act No. 10, 73d Congress, as amended and reenacted and amended by the Agricultural Marketing Agreement Act of 1937, as amended (7 U. S. C. 601 et seq.).

§ 974.2 *Department*. "Department" means the United States Department of Agriculture or such other Federal agency authorized to perform the price reporting functions specified in this part.

§ 974.3 *Secretary*. "Secretary" means the Secretary of Agriculture or any other officer or employee of the United States authorized to exercise the powers or to perform the duties pursuant to the Act of the said Secretary of Agriculture.

§ 974.4 *Person*. "Person" means any individual, partnership, corporation, association, or any other business unit.

§ 974.5 *Cooperative association*. "Cooperative association" means any cooperative marketing association of producers which the Secretary determines:

- (a) To be qualified under the provisions of the Act of Congress of February 18, 1922, as amended, known as the "Capper-Volstead Act"; and
- (b) To have full authority in the sale of milk of its members and to be engaged

in making collective sales of or marketing milk or its products for its members.

§ 974.6 *Columbus, Ohio, marketing area*. "Columbus, Ohio, marketing area" hereinafter called the "marketing area" means all the territory in Ohio described below in this section. As used in this section the term "territory" shall include all municipal corporations, Federal military reservations, facilities, and installations, and state institutions lying wholly or partially within the defined counties and townships: All the territory lying within Franklin County; Delaware County; the townships of Hartford, Monroe, Jersey, Lima, Etna, Bellingham, Liberty, St. Albans and Harrison in Licking County; the townships of Liberty, Violet and Bloom in Fairfield County; the townships of Madison, Harrison, Scioto and Darby in Pickaway County; the townships of Pleasant, Oak Run, Union, Fairfield, Jefferson, Canaan and Darby in Madison County; the townships of Jerome, Darby, Mill Creek, Paris and Dover in Union County.

§ 974.7 *Fluid milk product*. "Fluid milk product" means the fluid form of milk, skim milk, buttermilk, concentrated milk, eggnog, milk drinks (plain or flavored), cream (including sterilized cream), or any mixture in fluid form of milk, skim milk or cream (except storage cream, aerated cream products, ice cream mix, evaporated or condensed milk and sterilized products packaged in hermetically sealed containers).

§ 974.8 *Route*. "Route" means a delivery (including a sale from a plant store) of a fluid milk product(s) to a wholesale or retail stop(s) other than to a milk processing plant(s).

§ 974.9 *Fluid milk plant*. "Fluid milk plant" means any plant which is used in the receipt or processing of milk all or a portion of which is:

- (a) Disposed of during the month in the form of fluid milk product(s) on a route(s) in the marketing area; or
- (b) Furnished to a plant described in paragraph (a) of this section in the form of a fluid milk product(s).

§ 974.10 *Pool plant*. "Pool plant" means any fluid milk plant meeting the conditions of paragraph (a) or (b) of this section, except a plant operated by a producer-handler:

- (a) Any fluid milk plant from which a volume of Class I and Class II milk equal to not less than 50 percent of the Grade A milk received at such plant from dairy farmers described in § 974.12 (a) and from other plants is disposed of on a route(s) during the month and more than five percent of such receipts are disposed of on a route(s) in the marketing area; or

- (b) Any fluid milk plant which receives milk from dairy farmers described in § 974.12 (a) and from which fluid milk products equal to not less than 50 percent of the milk received at such plant from such dairy farmers during the month is moved to a plant(s) described in paragraph (a) of this section: *Provided*, That if such shipments are not less than 50 percent of the receipts of milk from such dairy farmers at such

plant during the immediately preceding period of August through November, such plant shall, upon written application to the market administrator by the operator of such plant on or before March 1 of any year, be designated as a pool plant for the months of March through July of such year.

§ 974.11 *Nonpool plant*. "Nonpool plant" means any milk manufacturing, processing, or bottling plant other than a pool plant.

§ 974.12 *Producer*. "Producer" means any person, except a producer-handler, who produces milk on a dairy farm which is approved by a duly constituted health authority for the production of milk for fluid disposition and which milk is:

- (a) Permitted by the health authority having jurisdiction in the marketing area to be labeled and disposed of as Grade A milk in the marketing area; and
- (b) Received during the month at a pool plant or diverted from a pool plant to another pool plant or to a nonpool plant pursuant to the conditions set forth in § 974.13.

§ 974.13 *Producer milk*. "Producer milk" means skim milk and butterfat contained in milk: (a) Received at a pool plant directly from producers; (b) diverted for the account of the operator of a pool plant to another pool plant; or (c) diverted to a nonpool plant for the account of a cooperative association or diverted for the account of the operator of the pool plant during the months of April, May, June and July: *Provided*, That producer milk diverted shall be deemed to have been received at a pool plant at the same location as the pool plant from which it is diverted: *And provided further*, That the cooperative association shall be notified by the operator of the pool plant of his intention to divert milk of its member-producers not less than 24 hours prior to such diversion.

§ 974.14 *Handler*. "Handler" means (a) any person who operates a fluid milk plant, and (b) any cooperative association with respect to milk diverted by it in accordance with the conditions set forth in § 974.13.

§ 974.15 *Producer-handler*. "Producer-handler" means any person who processes and packages milk from his own farm production, who distributes any portion of such milk on a route in the marketing area and who receives no milk from other dairy farmers or nonpool plants: *Provided*, That such person provides proof satisfactory to the market administrator that (a) the care and management of all the dairy animals and other resources necessary to produce the entire amount of milk handled (excluding transfers from pool plants) is the personal enterprise of and at the personal risk of such person and (b) the operation of the processing and distributing business is the personal enterprise of and at the personal risk of such person.

§ 974.16 *Other source milk*. "Other source milk" means all skim milk and butterfat contained in or represented by:

- (a) Receipts during the month in the form of fluid milk products, except: (1)

Fluid milk products received from pool plants, (2) producer milk, and (3) inventories of fluid milk products on hand at the beginning of the month; and

(b) Products other than fluid milk products from any source, except Class II and Class III products from pool plants, which are repackaged, reprocessed or converted to another product in the plant during the month or for which other utilization or disposition is not established on the basis of the records required pursuant to § 974.32.

§ 974.17 *Chicago butter price.* "Chicago butter price" means the arithmetical average, as computed by the market administrator, of the daily wholesale selling prices (using the midpoint of any range as one price) per pound of Grade A (92-score) bulk creamery butter at Chicago as reported for the month by the Department.

§ 974.18 *Nonfat dry milk solids price.* "Nonfat dry milk solids price" means the arithmetical average of the weighted averages of the carlot prices per pound of spray and roller process nonfat dry milk solids for human consumption, f. o. b. Chicago area manufacturing plants, as published for the month by the Department.

2. Delete § 974.22 (k) and substitute therefor the following:

(k) On or before the 10th day after the end of each month, upon request by a cooperative association described in § 974.77 (b) or the operator of a pool plant, furnish such person, unless otherwise directed by the Secretary, the name of each handler who during the month received producer milk and the percentage of the skim milk and butterfat in such milk which was classified in each class during the month and supply the changes in such percentages as are revealed by the regular audit of the market administrator.

3. Delete §§ 974.30 through 974.33, 974.40 through 974.45, 974.50 through 974.55, 974.60 through 974.63, 974.70 through 974.79 and substitute therefor the following:

REPORTS, RECORDS, AND FACILITIES

§ 974.30 *Reports of receipts and utilization.* On or before the 6th day after the end of each month, each handler shall report for such month to the market administrator for his pool plant(s), in the detail and on the forms prescribed by the market administrator, the following:

(a) The total pounds of skim milk and butterfat contained in or represented by:

(1) Producer milk;

(2) Fluid milk products received from other pool plants;

(3) Products specified in Class II and Class III milk which are reprocessed or converted to another product in the plant during the month;

(4) Other source milk; and

(5) Beginning and ending inventories of fluid milk products;

(b) The utilization of all skim milk and butterfat required to be reported pursuant to this section;

(c) Such other information with respect to such receipts and utilization as the market administrator may prescribe; and

(d) His producer payroll which shall show for each producer and association of producers:

(1) The total pounds of producer milk received and the average butterfat test thereof;

(2) The amount and date of any advance payments; and

(3) The nature and amount of each deduction or charge made by the handler.

§ 974.31 *Other reports.* Each handler and producer-handler shall make reports to the market administrator with respect to receipts and utilization at each of his fluid milk plants which is not a pool plant at such time and in such manner as the market administrator may request.

§ 974.32 *Records and facilities.* Each handler and producer-handler shall maintain and make available to the market administrator, his agent, or such other person as the Secretary may designate, during the usual hours of business, such accounts and records of his operations and such facilities as, in the opinion of the market administrator, are necessary to verify reports, or to ascertain the correct information with respect to (a) the receipts and utilization of all skim milk and butterfat handled, including all milk products received and disposed of in the same form; (b) the weights and tests for butterfat and for other contents, of all milk and milk products handled; and (c) payments to producers and cooperative associations.

§ 974.33 *Retention of records.* All books and records required under this part to be made available to the market administrator shall be retained by the handler for a period of three years to begin at the end of the calendar month to which such books and records pertain: *Provided*, That if, within such three-year period, the market administrator notifies the handler in writing that the retention of such books and records or of specified books and records, is necessary in connection with a proceeding under section 8c (15) (A) of the act or a court action specified in such notice the handler shall retain such books and records, or specified books and records, until further written notification from the market administrator. In either case, the market administrator shall give further written notification to the handler promptly upon the termination of the litigation or when the records are no longer necessary in connection therewith.

CLASSIFICATION

§ 974.40 *Basis of classification.* The skim milk and butterfat which are required to be reported pursuant to § 974.30 (a) shall be classified by the market administrator, subject to the provisions of §§ 974.41 to 974.46.

§ 974.41 *Classes of utilization.* Subject to the provisions set forth in

§§ 974.43 and 974.44 the classes of utilization shall be as follows:

(a) Class I milk shall be all skim milk and butterfat (1) disposed of in the form of a fluid milk product, except as provided in paragraphs (b) (2) and (d) (2) of this section; (2) in ending inventory of fluid milk products; and (3) not specifically accounted for as Class II, Class III or Class IV milk;

(b) Class II milk shall be all skim milk and butterfat (1) used to produce cottage cheese, and any mixture containing skim milk or butterfat disposed of in containers or dispensers under pressure for the purpose of dispensing an aerated product (such as "Reddi-Whip", "Instant Whip", etc.), and (2) disposed of in bulk fluid form during any of the months of April through July, inclusive, to any manufacturer of soup, candy, or bakery products for use in such manufacturing operation;

(c) Class III milk shall be all skim milk and butterfat contained in frozen cream, and used to produce condensed milk and condensed skim milk (except evaporated milk or skim milk in hermetically sealed cans) ice cream, ice cream mix, ice cream novelties, ice sherberts, ice milk, imitation ice cream and frozen dairy desserts; and

(d) Class IV milk shall be all skim milk and butterfat (1) used to produce any product other than those specified in paragraph (a), (b), or (c) of this section, (2) specifically accounted for as dumped or disposed of for livestock feed, (3) actual plant shrinkage allocated to producer milk pursuant to § 974.42, but not in excess of two percent of such receipts of skim milk and butterfat, respectively, and (4) actual plant shrinkage allocated to other source milk pursuant to § 974.42.

§ 974.42 *Shrinkage.* The market administrator shall allocate shrinkage at the handler's pool plant(s) as follows:

(a) Compute the total shrinkage of skim milk and butterfat, respectively;

(b) To the producer milk at such plant, add the producer milk diverted to such plant and subtract producer milk diverted from such plant to another pool plant; and

(c) Prorate the amount computed pursuant to paragraph (a) of this section between receipts of skim milk and butterfat, respectively, in producer milk as computed pursuant to paragraph (b) of this section and in other source milk received in the form of a fluid milk product in bulk.

§ 974.43 *Transfers.* Skim milk or butterfat transferred from a pool plant shall be classified as follows:

(a) As Class I milk if transferred in the form of a fluid milk product to another pool plant, unless:

(1) Utilization in another class is claimed by the operators of both plants in their reports submitted pursuant to § 974.30; and

(2) The transferee plant has utilization in the claimed classification of an equivalent amount of skim milk and butterfat, respectively, after making the assignment pursuant to § 974.46 (a) (1), (2), and (3) and the corresponding steps

of (b): *Provided*, That if either or both plants have other source milk, the skim milk and butterfat so transferred shall be classified so as to allocate the highest-valued use classification available at both plants to producer milk;

(b) As Class I milk, if transferred to a producer-handler in the form of a fluid milk product;

(c) As Class I milk if transferred or diverted in the form of a fluid milk product in bulk to a nonpool plant located 100 airline miles or more from the State Capitol in Columbus, Ohio; and

(d) As Class I milk if transferred or diverted in the form of a fluid milk product in bulk to a nonpool plant, except a plant operated by a producer-handler, located less than 100 airline miles from the State Capitol in Columbus, Ohio, unless:

(1) The handler claims classification in another class in his report submitted pursuant to § 974.30 and the operator of the nonpool plant maintains books and records showing the receipt and utilization of all skim milk and butterfat at such plant which are made available, if requested by the market administrator for verification: *Provided*, That if the classification claimed by the handler results in an amount of skim milk and butterfat claimed by all handlers transferring or diverting milk from pool plants to such nonpool plant in Class I milk, Class II milk, or Class III milk, respectively, of less than the assignable amounts remaining after the following computation, an equivalent amount of skim milk and butterfat shall be reclassified as Class I milk, Class II milk, or Class III milk, respectively, in series beginning with Class I milk, pro rata, in accordance with the total of the lower-priced classifications reported by each of such handlers:

(i) From the total skim milk and butterfat, respectively, in fluid milk products disposed of from such nonpool plant and classified as Class I milk and used to produce products in Class II milk and Class III milk, pursuant to the classification provisions of this order applied to such nonpool plant, subtract, in series beginning with Class I milk, the skim milk and butterfat received at such plant directly from dairy farmers who are approved by a duly constituted health authority to supply "Grade A" milk and who the market administrator determines constitute the regular source of supply for such nonpool plant;

(ii) From the remaining amount of Class I milk, subtract the skim milk and butterfat, respectively, in fluid milk products received from other markets and which is classified and priced as Class I milk pursuant to another order issued pursuant to the Act: *Provided*, That the amount subtracted pursuant to this subdivision shall be limited to such market's pro rata share of such remainder based on the total receipts of skim milk and butterfat, respectively, at such nonpool plant which are subject to the pricing provisions of an order issued pursuant to the Act; and

(iii) From the remaining amount of Class II milk and Class III milk, subtract, in series beginning with Class II milk,

the skim milk and butterfat, respectively, in milk received directly from "ungraded" dairy farmers at such nonpool plant.

§ 974.44 *Responsibility of handlers.* In establishing the classification as required in §§ 974.41 and 974.43, the burden rests upon the handler to account for all skim milk and butterfat received by him and to prove to the market administrator that such skim milk and butterfat should not be classified as Class I milk.

§ 974.45 *Computation of skim milk and butterfat in each class.* For each month the market administrator shall correct for mathematical and for other obvious errors the reports of receipts and utilization for the pool plant(s) of each handler and shall compute the pounds of skim milk and butterfat in Class I milk, Class II milk, Class III milk and Class IV milk for such handler: *Provided*, That if any of the water contained in the milk from which a product is made is removed before the product is utilized or disposed of by the handler, the pounds of skim milk used to produce and disposed of in such product shall be considered to be an amount equivalent to the nonfat milk solids contained in such product plus all of the water normally associated with such solids in the form of whole milk.

§ 974.46 *Allocation of skim milk and butterfat classified.* After making the computations pursuant to § 974.45, the market administrator shall determine the classification of producer milk received at the pool plant(s) of each handler during the month as follows:

(a) Skim milk shall be allocated in the following manner:

(1) Subtract from the total pounds of skim milk in Class IV milk the pounds of skim milk in producer milk shrinkage assigned to Class IV milk pursuant to § 974.41 (d) (3);

(2) Subtract from the remaining pounds of skim milk in each class, in series beginning with the lowest-priced use available, the pounds of skim milk in other source milk;

(3) Subtract from the remaining pounds of skim milk in Class II and Class III, respectively, the pounds of skim milk in products specified in Class II and Class III milk, respectively, which have been produced in a pool plant and which are reprocessed or converted to another product in the plant during the month: *Provided*, That if the amount to be subtracted pursuant to this subparagraph is in excess of the amount remaining in such class, such excess shall be subtracted from the next higher-priced available class;

(4) Subtract from the remaining pounds of skim milk in each class the skim milk in fluid milk products received from other pool plants according to the classification determined pursuant to §§ 974.41 and 974.43;

(5) Subtract from the remaining pounds of skim milk in Class I milk, the pounds of skim milk in inventory of fluid milk products on hand at the beginning of the month;

(6) Add to the pounds of skim milk remaining in Class IV milk the skim milk subtracted pursuant to subparagraph (1) of this paragraph; and

(7) Subtract, in series beginning with the lowest-priced use available, the amount, if any, by which the total skim milk remaining in all classes exceeds the pounds of skim milk in producer milk.

(b) Butterfat shall be allocated by the same procedure prescribed for skim milk in paragraph (a) of this section.

MINIMUM PRICES

§ 974.50 *Basic formula price.* The basic formula price per hundredweight of milk for the month shall be the higher of the prices as computed by the market administrator for such month pursuant to paragraphs (a) and (b) of this section:

(a) The arithmetical average of the basic (or field) prices per hundredweight reported to have been paid, or to be paid, for milk of 3.5 percent butterfat content received from farmers during the month at the following places for which prices are reported to the market administrator or to the Department by the companies listed below:

Company and Location

Borden Co., Mount Pleasant, Mich.
Borden Co., New London, Wis.
Borden Co., Orfordville, Wis.
Carnation Co., Oconomowoc, Wis.
Carnation Co., Richland Center, Wis.
Carnation Co., Sparta, Mich.
Pet Milk Co., Belleville, Wis.
Pet Milk Co., Coopersville, Mich.
Pet Milk Co., New Glarus, Wis.
Pet Milk Co., Wayland, Mich.
White House Milk Co., Manitowoc, Wis.
White House Milk Co., West Bend, Wis.

(b) The price per hundredweight computed by adding together the plus amounts calculated pursuant to subparagraphs (1) and (2) of this paragraph:

(1) From the Chicago butter price, subtract 3.5 cents, and multiply the difference by 4.2; and

(2) From the nonfat dry milk solids price, subtract 4 cents and multiply the difference by 8.2.

§ 974.51 *Class prices.* Subject to the provisions of §§ 974.52 and 974.53 the minimum class prices for producer milk per hundredweight for the month shall be determined by the market administrator as follows:

(a) *Class I milk.* The price for Class I milk shall be the basic formula price for the preceding month, plus \$1.10 and plus or minus a "supply-demand adjustment" computed as follows:

(1) Compute a "current utilization percentage" by dividing the total receipts of producer milk during the second and third preceding months by the total gross pounds of Class I milk (less ending inventory and adjusted to eliminate duplications due to interhandler transfers) for the same months, multiplying the result by 100, and rounding to the nearest integer.

(2) Compute a "net utilization percentage" by subtracting (algebraically) from the current utilization percentage the following appropriate "standard utilization percentage":

Month for which a price is being computed:	Standard utilization percentage
January	128
February	124
March	128
April	127
May	130
June	135
July	144
August	152
September	147
October	143
November	131
December	128

(3) Determine the amount of the supply-demand adjustment from the following table:

Net utilization percentage:	Supply-demand adjustment (cents per hundredweight)
+16 or over	-38
+12 or +13	-28
+8 or +9	-20
+4 or +5	-10
+1 or -1	0
-4 or -5	+10
-8 or -9	+20
-12 or -13	+28
-16 or under	+38

Provided, That when the net utilization percentage is between the two tabulated brackets, the supply-demand adjustment shall be determined by the tabulated bracket which is adjacent to the net utilization percentage and is the same as or the nearer to the bracket used in the immediately preceding month.

(b) *Class II milk*. The price for Class II milk shall be the Class I price minus 40 cents.

(c) *Class III milk*. The price for Class III milk shall be the basic formula price, adjusted during the months of August through March, by the supply-demand adjustment as computed in paragraph (a) (3) of this section and plus the following amount for the specified month:

Month:	Amount (dollars)
August through March	0.60
April through July	.30

(d) *Class IV milk*. The price for Class IV milk shall be the sum of the values computed pursuant to § 974.50 (b) (1) and (2) minus 12 cents for the months of April through July and minus 7 cents for the months of August through March.

§ 974.52 *Butterfat differentials to handlers*. For each one-tenth of one percent that the weighted average butterfat test of producer milk which is classified in each class for each handler is more or less than 3.5 percent there shall be added to or subtracted from, as the case may be, the price for such Class A butterfat differential calculated by the market administrator as follows:

(a) *Class I milk*. Multiply the Chicago butter price by 0.130.

(b) *Class II milk*. Multiply the Chicago butter price by 0.130.

(c) *Class III milk*. Multiply the Chicago butter price by the following factor for the specified month:

Month:	Factor
August through March	0.1404
April through July	.1219

(d) *Class IV milk*. Multiply the Chicago butter price by 0.120.

§ 974.53 *Location differentials to handlers*. For that producer milk which is received at a pool plant located 80 miles or more from the State Capitol in Columbus, Ohio, by the shortest hard surfaced highway distance, as determined by the market administrator, and which is transferred to another pool plant in the form of a fluid milk product and assigned to Class I or Class II milk pursuant to the proviso of this section, or otherwise classified as Class I milk or Class II milk, the prices specified in § 974.51 (a) and (b) shall be reduced at the rate set forth in the following schedule according to the location of the pool plant where such milk is received from producers:

Distance from the Ohio State Capitol (miles):	Rate per hundredweight (cents)
80 but less than 90	15.0
For each additional 10 miles or fraction thereof an additional	1.5

Provided, That for the purpose of calculating such location differential, fluid milk products which are transferred between pool plants shall be assigned to any remainder of Class IV and Class III milk in the transferee plant after making the calculations prescribed in § 974.46 (a) (3), and the comparable steps in (b) for such plant, such assignment to transferor-plants to be made in sequence according to the location differential applicable at each plant, beginning with the plant having the largest differential.

§ 974.54 *Use of equivalent prices*. If for any reason a price quotation required by this part for computing class prices or for other purposes is not available in the manner described, the market administrator shall use a price determined by the Secretary to be equivalent to the price which is required.

DETERMINATION OF UNIFORM PRICE

§ 974.60 *Net obligation of each handler*. The net obligation of each handler for producer milk received during the month shall be a sum of money computed as follows:

(a) Multiply the pounds of producer milk in each class by the applicable class price and add together the resulting amounts;

(b) Add the amount(s) computed by multiplying the pounds deducted from each class for such handler pursuant to § 974.46 (a) (7) and the corresponding step of (b) by the applicable class price;

(c) Subtract an amount computed as follows: Multiply the difference between the Class III and the Class IV price for skim milk by the skim milk in producer milk in excess of the skim milk classified as Class I, Class II and Class III milk (other than that used to produce condensed skim milk) in any of the months of April, May, June and July which is disposed of in such month from the pool plant of such handler in the form of condensed skim milk to a plant whose supply of skim milk and butterfat is not required to be approved as Grade A milk by a duly constituted health authority; and

(d) Add an amount computed as follows: Multiply the amount of skim milk

and butterfat subtracted pursuant to the proviso in § 974.46 (a) (3) by the difference between the current month's price for the class in which such skim milk and butterfat was originally classified and the price of the class from which it is subtracted during the month;

(e) Add or subtract, as the case may be, any amount due the producer-settlement fund or the handler as a result of errors discovered by the market administrator in the verification of reports or payments of such handler for any previous month.

§ 974.61 *Computation of uniform price*. For each month, the market administrator shall compute the uniform price per hundredweight of producer milk of 3.5 percent butterfat content as follows:

(a) Combine into one total the values computed pursuant to § 974.60 for all handlers except those who did not make payments pursuant to § 974.71 for the previous month;

(b) Subtract for each of the months of April, May, June and July an amount computed by multiplying the hundredweight of milk received from producers during the month by 35 cents;

(c) Add for each of the months of September, October, and November, 20, 30 and 30 percent, respectively, and for December the balance of the total amount subtracted during the immediately preceding April-July period pursuant to paragraph (b) of this section;

(d) Add the sum of the values of the location differentials allowable pursuant to § 974.74;

(e) Subtract, if the weighted average butterfat test of all producer milk represented in the sum computed pursuant to paragraph (a) of this section is greater than 3.5 percent, or add, if the weighted average butterfat test of such milk is less than 3.5 percent, an amount computed as follows: Multiply the hundredweight of such milk by such difference and multiply the result by the butterfat differential computed pursuant to § 974.73 times 10;

(f) Add the unobligated balance in the producer-settlement fund;

(g) Divide by the hundredweight of producer milk; and

(h) Subtract not less than 4 cents nor more than 5 cents.

§ 974.62 *Notification of handlers*. On or before the 10th day after the end of each month, the market administrator shall:

(a) Notify each handler who operates a pool plant:

(1) The amount and value of his milk in each class pursuant to § 974.60;

(2) The totals of such amounts and values due the producer-settlement fund pursuant to § 974.71; and

(3) The amount to be paid by such handler pursuant to § 974.76.

(b) Notify each handler who operates a fluid milk plant, not a pool plant:

(1) The amount due the producer-settlement fund pursuant to § 974.63; and

(2) The amount to be paid by such handler pursuant to § 974.76.

§ 974.63 Obligation of handlers operating a fluid milk plant which is a non-pool plant. On or before the 12th day after the end of each month, each handler operating a fluid milk plant which is a nonpool plant shall pay to the market administrator for deposit in the producer-settlement fund an amount computed by multiplying the hundredweight of fluid milk products disposed of from such plant during the month on routes in the marketing area (less the hundredweight of any Class I milk received at such fluid milk plant during the month from a pool plant) by the amount by which the Class I price applicable at such plant computed pursuant to § 974.51 (a) exceeds the applicable Class IV price computed pursuant to § 974.51 (d).

PAYMENTS

§ 974.70 Producer-settlement fund. The market administrator shall establish and maintain a separate fund, known as the "producer-settlement fund", which shall function as follows:

(a) All payments made by handlers pursuant to §§ 974.63 and 974.71 shall be deposited in this fund, and all payments made pursuant to § 974.72 shall be made out of this fund; and

(b) All amounts subtracted pursuant to § 974.61 (b) shall be deposited in this fund and set aside as an obligated balance until withdrawn to effectuate § 974.72 in accordance with the requirements of § 974.61 (c).

§ 974.71 Payments to producer-settlement fund. On or before the 12th day after the end of each month, each handler shall pay to the market administrator his obligation for milk for such month of which he is notified pursuant to § 974.62 (a), less the amount of deductions authorized by each producer pursuant to § 974.72 (a) (4) and itemized on the handler's producer payroll: *Provided*, That such deductions for each individual producer shall not exceed the total value of the milk received from such producer during the month.

§ 974.72 Payments to producers. (a) On or before the 16th day after the end of each month, the market administrator shall make payment to each producer for milk received from him during the month by each handler from whom the appropriate payments have been received pursuant to § 974.71 at not less than the uniform price computed pursuant to § 974.61 subject to the following adjustments:

(1) The butterfat differential pursuant to § 974.73;

(2) The location differential pursuant to § 974.74;

(3) Less marketing service deductions pursuant to § 974.77 (a);

(4) Less proper deductions authorized in writing by the producer; and

(5) Adjusted for any error in making payment to such producer for past months: *Provided*, That if the balance in the producer-settlement fund not otherwise obligated is insufficient to make all payments pursuant to this section, the market administrator shall reduce such payments pro rata and shall complete such payments on or before the

next date for making payments pursuant to this section following that on which such balance of payment is received.

(b) In making payments to producers pursuant to paragraph (a) of this section, the market administrator shall pay on or before the second date prior to the date payments are due to individual producers, to a cooperative association qualified under § 974.77 (b) which is authorized to collect payment for milk of its members and from which a written request for such payment has been received, the aggregate of the payments calculated pursuant to paragraph (a) of this section for all producers certified to the market administrator by such cooperative association as having authorized such association to receive such payments.

(c) In making the payments to producers pursuant to paragraphs (a) and (b) of this section, the market administrator shall furnish each producer or cooperative association, as the case may be, with a supporting statement which shall show for each month:

(1) The month and the identity of the handler and the producer;

(2) The total pounds and the average butterfat content of milk received from such producer;

(3) The minimum rate or rates at which payment to such producer is required pursuant to this part;

(4) The amount or the rate per hundredweight and nature of each deduction claimed by the handler; and

(5) The net amount of payment to such producer.

§ 974.73 Butterfat differentials to producers. In making payment for producer milk pursuant to § 974.72, there shall be added to or subtracted from, respectively, the uniform price per hundredweight for each one-tenth of one percent of butterfat content in such milk above or below 3.5 percent a butterfat differential computed by the market administrator as follows:

(a) Compute the percentage of the total butterfat in producer milk assigned to each class pursuant to § 974.46;

(b) Multiply each such percentage by the butterfat differential for the respective class pursuant to § 974.52; and

(c) Add into one total the values obtained in paragraph (b) of this section and round-off such total to the nearest one-tenth cent.

§ 974.74 Location differentials to producers. In making payment for producer milk pursuant to § 974.72, the uniform price for all producer milk received at a pool plant located 80 miles or more by the shortest hard surfaced highway distance from the Ohio State Capitol in Columbus, as determined by the market administrator, shall be reduced by the appropriate zone differential provided in § 974.53.

§ 974.75 Adjustment of errors. Whenever audit by the market administrator of the payment required to be made by a handler pursuant to §§ 974.63 and 974.71 discloses payment of less than is required, the handler shall make up such payment not later than the time for

making such payments next following such disclosure.

§ 974.76 Expense of administration. As his pro rata share of expense incurred in the maintenance and function of the office of the market administrator and in the performance of his duties, each handler shall pay to the market administrator on or before the 12th day after the end of the month, two cents per hundredweight, or such lesser amount as the Secretary from time to time may prescribe, with respect to (a) all receipts at his pool plant during the month of producer milk and other source milk received in the form of a fluid milk product, and (b) all fluid milk products disposed of from a nonpool plant on routes in the marketing area.

§ 974.77 Marketing services. (a) Except as set forth in paragraph (b) of this section, the market administrator shall deduct 5 cents per hundredweight or such amount not to exceed 5 cents as the Secretary may from time to time prescribe, from the payments made to each producer pursuant to § 974.72 (a). Such moneys shall be used by the market administrator to check weights, samples, and tests of producer milk received by handlers and to provide producers with market information, such service to be performed by the market administrator or by an agent engaged by and responsible to him;

(b) In the case of producers for whom a cooperative association which, as determined by the Secretary, has its entire activities under the control of its members and is actually performing, as determined by the Secretary, the services set forth in paragraph (a) of this section, the market administrator shall make, in lieu of the deductions specified in paragraph (a) of this section, such deductions from the payments to be made to such producers as may be authorized by the membership agreement or marketing contract between such cooperative association and such producers and, on or before the 14th day after the end of each delivery period, pay over such deductions to the cooperative association rendering such services.

§ 974.78 Overdue accounts. Any unpaid obligation of a handler or of the market administrator pursuant to §§ 974.63, § 974.71, § 974.72, § 974.75, § 974.76, or § 974.77 shall be increased one-half of one percent each month or fraction thereof, compounded monthly, until such obligation is paid.

4. Delete § 974.91.

5. Add a new section as follows:

§ 974.93 Plants subject to other Federal orders. The provisions of this part shall not apply to a milk plant during any month in which the milk at such plant would be subject to the classification and pricing provisions of another order issued pursuant to the act unless such plant meets the requirements for a pool plant pursuant to § 974.10 and a greater volume of fluid milk products is disposed of from such plant to pool plants and to retail or wholesale outlets located in the Columbus, Ohio, marketing area than in the marketing area

regulated pursuant to such other order during the current month and each of the three months, immediately preceding: *Provided*, That the operator of a plant which is exempted from the provisions of this part pursuant to this section shall, with respect to the total receipts and utilization or disposition of skim milk and butterfat at the plant, make reports to the market administrator at such time and in such manner as the market administrator may require and allow verification of such reports by the market administrator.

Proposed by Med-O-Pure Dairy Foods, Inc.:

6. Amend § 974.3, to include the entire counties of Union, Madison, Fayette, Highland, Pickaway and Ross, all in the State of Ohio.

Proposed by Deeds Bros. Dairy:

7. Amend § 974.3 to include all of the territory in Fairfield County, Ohio.

Proposed by Borden's Moores & Ross:

8. Delete § 974.53 and substitute therefor the following:

§ 974.53 *Class III milk prices*. The minimum price per hundredweight to be paid by each handler for Class III milk shall be the basic formula price for the preceding month as computed pursuant to the provisions of this order by the market administrator, plus the amounts indicated for the months specified:

January, February, March, August and September.....	\$0.30
April, May, June and July.....	.10
October, November and December.....	.40

Proposed by the American Jersey Cattle Club:

9. Delete § 974.76 and substitute therefor the following:

§ 974.76 *Butterfat differential*. For each month the market administrator shall compute (to the nearest one-tenth cent) a butterfat differential by subtracting from the weighted average price per hundredweight of all butterfat from producer milk in each of the milk classes the weighted average price per hundredweight of all skim milk from producer milk in each of the milk classes, and dividing the remainder by 1,000.

Proposed by the Dairy Division:

10. Make such other changes as may be required to make the marketing agreement and order in their entirety conform with any amendments thereto which may result from this hearing and consider any other suggestions for changes in the order language which may be necessary for clarification in redrafting and reissuing the entire order.

Copies of this notice of hearing and the order may be procured from the Market Administrator, 74 Hartman Building, Room 505, 79 East State Street, Columbus 15, Ohio, or from the Hearing Clerk, Room 112, Administration Building, United States Department of Agriculture, Washington 25, D. C., or may be there inspected.

Issued at Washington, D. C., this 22d day of April 1958.

[SEAL] ROY W. LENNARTSON,
Deputy Administrator.

[F. R. Dock 58-3119; Filed, Apr. 25, 1958;
8:40 a. m.]

[7 CFR Part 995]

[Docket No. AO-197-5]

MILK IN NORTH CENTRAL OHIO MARKETING AREA

DECISION WITH RESPECT TO PROPOSED AMENDMENTS TO TENTATIVE MARKETING AGREEMENT AND TO ORDER

Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U. S. C. 601 et seq.), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900), a public hearing was held at Lima, Ohio, on January 7, 1958, pursuant to notice thereof issued on December 18, 1957 (22 F. R. 10464).

Upon the basis of the evidence introduced at the hearing and the record thereof, the Deputy Administrator, Agricultural Marketing Service, on March 28, 1958 (23 F. R. 2193) filed with the Hearing Clerk, United States Department of Agriculture, his recommended decision containing notice of the opportunity to file written exceptions thereto.

The material issues of record relate to:

1. Revision of the order provisions dealing with:

(a) The classification of milk transferred between pool plants;

(b) The sharing of the Class I utilization at distributing plants with supply plants which are regular sources of milk for such distributing plants; and

(c) Computation of allowable shrinkage.

2. Expansion of the marketing area.

3. Inclusion in the order of stated location adjustments for Class I prices.

4. Provision for eligible milk quotas based on deliveries under another Federal order.

5. Reports by the market administrator to cooperative associations of the utilization of producer-members' milk and butterfat overages and shortages at pool plants supplied by such members.

Findings and conclusions. The following findings and conclusions on the material issues are based on evidence presented at the hearing and the record thereof:

1. Provisions for the classification of milk moved between pool plants (§ 995.43) should be amended to provide for (a) the diversion of milk between pool plants, (b) changes in the method of classifying milk transferred or diverted between pool plants, and (c) changes in the method of equalizing Class I utilization between distributing plants and supply plants which furnish such distributing plants with milk.

Proposals were considered to permit the diversion of milk between pool plants during the months of March through June. Another proposal would provide for the pooling of milk receipts and utilization at supply plants with that of distributing plants served by such plants. Arguments were made at the hearing also for the pooling of milk receipts and utilization at two or more distributing plants operated by the same handler.

The present order provides for individual plant pricing of producer milk. Milk from producers is considered as a receipt at the plant at which it is physi-

cally received. Thus, diversion of milk between plants is not recognized. Transfers of milk between distributing plants are classified as Class I milk if transferred in consumer packages and as Class II milk if transferred in the form of bulk milk to the extent available before assigning producer milk at the receiving plant to Class II.

The provisions governing the receipt and classification of milk moved between distributing plants have tended to limit somewhat the flow of milk between pool plants. Distributing plants, in some instances, serve as temporary suppliers of bulk milk for other distributing plants. Class II classification of milk transferred from a distributing plant to another distributing plant, which needs the milk to fill Class I uses, has resulted in producers at the transferring plant carrying the necessary reserve supply associated with such milk and to some extent the reserve supply for direct receipts of producer milk at the transferee-plants. At the same time, producers delivering milk directly to the transferee-plant have realized a Class I classification for substantially all of their milk deliveries. For these reasons, provision should be made for classifying bulk milk transferred between pool plants on the basis of the classification claimed by the operators of such plants, provided that the claimed classification does not result in a higher proportion of the producer milk at the transferring plant being classified as Class I milk than the producer milk at the transferee-plant. Also, the claimed classification must result in the assignment of the available Class I milk in both plants to producer milk to the fullest extent possible. These limitations on the classification of milk transferred between pool plants are necessary to protect the effectiveness of the Class I pricing plan and to promote the goals of the individual-handler pool which have been found necessary for this market.

With the above stated limitations, the proposed method of classification may be applied to the diversion of milk between pool plants. Furthermore, unlimited diversion of milk between pool plants may be permitted by providing that diversions of milk from a pool plant will be deemed to have been received by the operator of such plant at the location (for the purpose of pricing—§§ 995.50 and 995.60) of the pool plant to which it is diverted. The definition of producer milk (§ 995.12) should be changed accordingly. This change will preclude any advantages that might otherwise be gained by multiple plant operators in diverting Class I milk from a plant located in one zone to another plant in a higher priced zone. The proposed method of pricing diverted milk will remove any need to limit diversion of milk to other pool plants, in amount or to particular seasons of the year, as was proposed to safeguard the pricing plan. The recommended method will assure that each handler will pay the same Class I price for diverted milk as is paid for producer milk which is received directly from producers at the plant to which it is diverted.

With the proposed changes in the classification of milk transferred or diverted

between pool plants, there is no need to provide for the pooling of receipts and utilization at distributing plants operated by the same handler. The proposed change will provide an appropriate and reasonable basis for producers to share in the Class I utilization of milk transferred between such plants.

The present order provides for the exchange of Class I utilization at distributing plants for Class II utilization at supply plants which previously qualified as pool plants and supplied such distributing plants during the immediately preceding period of September through December. The extent of such exchange is limited to the least of:

(a) The average monthly volume of Class I milk supplied to the distributing plant during the preceding period of September-December;

(b) A volume computed by applying the percentage of the Class I milk furnished by the supply plant during such period to the total Class I milk at the distributing plant during the current month; and

(c) The receipts of producer milk at the supply plant during the current month.

At the present time, there is but one supply plant under the order which regularly furnishes a distributing plant with milk. This plant, located at Bluffton, Ohio, acts as a receiving station for a distributing plant located at Mansfield, Ohio. In conjunction with the receiving station facilities at this plant, manufacturing facilities are maintained for converting reserve supplies of milk into manufactured dairy products. The Mansfield distributing plant has little or no manufacturing facilities and is engaged almost exclusively in the processing and bottling of fluid milk products. Approximately one-half of the fluid milk requirements at the Mansfield plant is procured directly from producers in the Mansfield area. During the low production season, nearly all the producer milk received at the Bluffton supply plant is moved to Mansfield where it is needed to fill the requirements for fluid disposition. In other seasons of the year, only a portion of the Bluffton milk is required to meet the bottling requirements at the Mansfield plant. Reserve supplies can be most economically marketed by processing such milk at the Bluffton plant.

Under the provisions of the present order, the amount of milk received at the Bluffton plant which could be classified as Class I milk has resulted in substantially lower blend prices to producers in the Bluffton area as compared with prices to producers delivering their milk directly to the Mansfield plant. Production and sales conditions have changed materially from those which prevailed at the time the present order provisions were formulated. Also, the number of the producers supplying the Mansfield plant has declined as producers have withdrawn from the market and transferred to other competing markets.

As a result of these changed conditions, some of the limitations on the classification of milk at supply plants were suspended during the months of July and August 1957. By October 1957, substan-

tial differences again prevailed between the blend prices received by producers at the Bluffton and Mansfield plants. In order to reduce this difference in subsequent months, milk was moved between the Bluffton and Mansfield plants even though such movement was not necessary to fulfill Class I requirements. Such back hauling of milk is an economic waste.

The Bluffton plant serves as a regular and dependable source of Grade A milk for the Mansfield distributing plant. Such milk is needed to supply the year-around requirements at the Mansfield plant. Under the individual pool plant pricing arrangement of this order, however, it is not appropriate to pool the receipts and utilization of milk at all pool plants operated by the same handler. In order to promote equality in relative returns for milk among producers delivering their milk to supply plants with the producers at distributing plants which are regularly supplied by such supply plants, provision for exchanging Class I utilization at distributing plants for Class II utilization at supply plants should be made. The present provisions of the order which limit the amount of Class I utilization that can be assigned a supply plant (which was a pool plant and supplied milk during the immediately preceding months of September through December) to the extent that the percentage of producer milk classified as Class I milk at the supply plant shall not exceed the corresponding percentage at the distributing plant should be continued. This is necessary to assure that the blend price at a distributing plant cannot be depressed unduly by assigning Class I utilization to supply plants and also that blend prices at supply plants cannot be increased unduly at the expense of producers at the distributing plant. The handlers over-all cost of Class I milk which is processed at the distributing plant should not be altered by this exchange. The present method of computing the handler's obligation to producers as provided by the present order, therefore, should be continued. This will preserve the advantage accruing to producers of direct shipped milk because of their more favorable location in relation to the distributing plant and will promote also the most efficient use of marketing resources. The proposed changes in the method of assigning Class I utilization to producer receipts at supply plants will not change the cost of milk to the handler. A handler assigning Class I milk to a supply plant over and above the amount of milk moved to the distributing plant will have the same cost of milk as he would have had if such Class I milk were received directly from producers at the distributing plant.

A proposal was made to include producer milk diverted from a pool plant to another pool plant with receipts at the second pool plant for the purpose of computing the maximum allowable shrinkage in Class II milk. Adoption of this proposal will not change the total allowable shrinkage on producer milk. The shrinkage allowance will accrue to the plant where the milk is physically

received. This is reasonable and conforms with the recommended change to permit the diversion of milk between pool plants. The proposal should be adopted.

2. The definition of the marketing area should not be changed. A proposal was made to expand the present marketing area to include the cities of Bellefontaine and Kenton, Ohio. The proponent, who operates a plant in Marion, Ohio, sells milk in both cities. Sales also are made here by other handlers whose plants are subject to regulation. It was estimated that between 30 and 40 percent of the milk sold in these cities is supplied by regulated handlers and 60 to 70 percent by unregulated plants. The operators of these unregulated plants sell milk outside of Kenton and Bellefontaine in competition with sales from other unregulated plants. Regulated handlers have not experienced a loss of sales in these areas. There was no evidence of disruptive competitive practices by unregulated distributors. Regulated handlers have increased or at least maintained their respective proportions of total sales. The proponent failed to present any evidence which would indicate that disorderly marketing conditions would prevail if the marketing area were not extended. Producers who supply milk to regulated handlers who supply the Kenton and Bellefontaine markets favored the extension of regulation. However, there was no evidence to indicate that the proposed extension of the marketing area is necessary to promote or maintain orderly marketing of such producers' milk. The proposal should be denied.

3. The location adjustment provisions should not be changed.

The present order provides for establishing the Class I price at pool plants under the North Central Ohio marketing area by applying the minimum Class I price f. o. b. the Cleveland marketing area (Order No. 75) less the location adjustment rate on Class I milk which would be applicable at a plant under Order No. 75 at the same location as the location of the pool plant under the North Central Ohio order. It was proposed that stated location adjustments be included in the North Central Ohio order for adjusting the Cleveland Class I price. The primary reason for proposing stated adjustments was to "make definite and certain the exact amount which should be deducted as a location adjustment and will permit handlers to know what the Class I price should be * * * so that any one working with Order No. 95 will not have to refer to Order No. 75 to determine location differentials."

The market administrator announces the Class I price which is applicable at each pool plant each month. The location adjustment applied in determining the Class I price at each pool plant has been the same each month since the order was issued July 1, 1957 and will continue the same month after month unless the Cleveland location adjustments are changed by amendment of that order. Such an amendment would require a public hearing and official notice.

as prescribed by the regulations governing such rule making procedures.

The need for maintaining close alignment between minimum Class I prices in the North Central Ohio area and Class I prices under the Cleveland order was discussed previously in the Secretary's decision of May 17, 1957 (22 F. R. 3567) of which official notice is hereby taken. For these reasons, no change should be made in the method of applying location adjustments at this time.

4. Provision should be made for assigning "eligible milk quotas" to producers who transfer to the North Central Ohio market from other Federal order markets.

A proposal was made which would provide for the establishment of eligible milk quotas on the basis of herd production records regardless of where the milk was shipped for the period July through December of each year. The establishment of milk quotas on the basis of herd production records is administratively impracticable. No evidence was given supporting a change in the quota forming period from October through December. The proponent's testimony was directed primarily to the need for assignment of quotas to producers who transfer from another Federal order market to the North Central Ohio market following the quota forming period. Records of deliveries under other orders are available to the market administrator from the records of the respective other market administrators. Under such circumstances, it is feasible to provide for the assignment of quotas to such producers. The order should be amended accordingly.

5. The market administrator should report to each cooperative association the total receipts and class utilization of producer-members' milk.

Information on the class utilization of producer-member milk is helpful to the cooperative association in furnishing milk to pool plants in accordance with their needs for Class I milk. This will tend to promote more orderly marketing of producer milk. Under the individual-handler pool, close estimates of utilization percentages can be derived for each pool plant from the market administrator's reports on class and blend prices. However, such derived figures are subject to error as a result of audit adjustments or variation in the average tests of milk in each class which are reflected in blend prices. It is desirable, therefore, to supply the association with the actual utilization percentages. For the purpose of this report the class utilizations at a pool plant should be prorated to member-milk in accordance with the relationship that the receipts from producer-members is to total receipts of producer milk at the pool plant.

A proposal was considered which would provide reports to a cooperative association of butterfat overages or shortages in producer-member milk at pool plants supplied by the cooperative. The cooperative associations claimed that the reporting of butterfat overages or shortages of member milk would assist them in evaluating their program for checking the weights and butterfat content of producer-members' milk.

Butterfat shortages or overages may result from causes not related to the testing of producer milk, including errors or oversights made in reporting by handlers. The order provides for correction of any errors in such reports at a later date through the market administrator's auditing program. Reports to cooperatives necessarily would have to be based on the unaudited reports submitted by the handler to be of timely value to the cooperative. For these reasons, the application of such reports are limited and they could be the cause of misunderstanding. The proposal should not be adopted at this time.

Rulings on proposed findings and conclusions. Briefs and proposed findings and conclusions were filed on behalf of certain interested parties in the market. These briefs, proposed findings and conclusions and the evidence in the record were considered in making the findings and conclusions set forth above. To the extent that the suggested findings and conclusions filed by interested parties are inconsistent with the findings and conclusions set forth herein, the requests to make such findings or reach such conclusions are denied for the reasons previously stated in this decision.

General findings. The findings and determinations hereinafter set forth are supplementary and in addition to the findings and determinations previously made in connection with the issuance of the aforesaid order and of the previously issued amendments thereto; and all of said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

(a) The tentative marketing agreement and the order, as hereby proposed to be amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the act;

(b) The parity prices of milk as determined pursuant to section 2 of the act are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the marketing area, and the minimum prices specified in the proposed marketing agreement and the order, as hereby proposed to be amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(c) The tentative marketing agreement and the order, as hereby proposed to be amended, will regulate the handling of milk in the same manner as, and will be applicable only to persons in the respective classes of industrial and commercial activity specified in, a marketing agreement upon which a hearing has been held.

Rulings on exceptions. In arriving at the findings and conclusions, and the regulatory provisions of this decision, each of the exceptions received was carefully and fully considered in conjunction with the record evidence pertaining thereto. To the extent that the findings and conclusions, and the regulatory provisions of this decision are at variance

with any of the exceptions, such exceptions, are hereby overruled for the reasons previously stated in this decision.

Marketing agreement and order. Annexed hereto and made a part hereof are two documents entitled, respectively, "Marketing Agreement Regulating the Handling of Milk in the North Central Ohio Marketing Area", and "Order Amending the Order Regulating the Handling of Milk in the North Central Ohio Marketing Area", which have been decided upon as the detailed and appropriate means of effectuating the foregoing conclusions:

It is hereby ordered, That all of this decision, except the attached marketing agreement, be published in the FEDERAL REGISTER. The regulatory provisions of said marketing agreement are identical with those contained in the order as hereby proposed to be amended by the attached order which will be published with this decision.

Determination of representative period. The month of March 1958 is hereby determined to be the representative period for the purpose of ascertaining whether the issuance of the attached order amending the order regulating the handling of milk in the North Central Ohio marketing area, is approved or favored by producers, as defined under the terms of the order as hereby proposed to be amended, and who, during such representative period, were engaged in the production of milk for sale within the aforesaid marketing area.

Issued at Washington, D. C., this 22d day of April 1958.

[SEAL]

DON PAARLBERG,
Assistant Secretary.

Order¹ Amending the Order Regulating the Handling of Milk in the North Central Ohio Marketing Area

§ 995.0 *Findings and determinations.* The findings and determinations hereinafter set forth are supplementary and in addition to the findings and determinations previously made in connection with the issuance of the aforesaid order and of the previously issued amendments thereto; and all of said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

(a) *Findings upon the basis of the hearing record.* Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U. S. C. 601 et seq.), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR, Part 900), a public hearing was held upon certain proposed amendments to the tentative marketing agreement and to the order regulating the handling of milk in the North Central Ohio marketing area. Upon the basis of the evidence

¹ This order shall not become effective unless and until the requirements of § 900.14 of the rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders have been met.

introduced at such hearing and the record thereof, it is found that:

(1) The said order as hereby amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the act;

(2) The parity prices of milk, as determined pursuant to section 2 of the act, are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the said marketing area, and the minimum prices specified in the order as hereby amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and whole-some milk, and be in the public interest;

(3) The said order as hereby amended, regulates the handling of milk in the same manner as, and is applicable only to persons in the respective classes of industrial or commercial activity specified in, a marketing agreement upon which a hearing has been held.

Order relative to handling. It is therefore ordered, that on and after the effective date hereof, the handling of milk in the North Central Ohio marketing area shall be in conformity to and in compliance with the terms and conditions of the aforesaid order, as hereby amended, and the aforesaid order is hereby amended as follows:

1. In § 995.11 (b) delete "to a nonpool plant".

2. Delete § 995.12 and substitute therefor the following:

§ 995.12 *Producer milk.* "Producer milk" means only that skim milk and butterfat contained in milk of a producer which is: (a) Received at a pool plant directly from such producer or diverted from a pool plant by the operator of such plant to another pool plant, and (b) diverted during the months of January through September from a pool plant by the operator of such plant or by a cooperative association for its account to a nonpool plant for not more than one-third of the days of delivery for such producer during any month in such period, except the months of March through June: *Provided*, That milk diverted pursuant to paragraphs (a) and (b) of this section shall be deemed to have been received by the diverting handler at the pool plant from which it is diverted, except that for the purpose of §§ 995.50 and 995.60, milk diverted pursuant to paragraph (a) of this section shall be deemed to have been received by the diverting handler at a location of the plant to which it is diverted.

3. At the end of § 995.22 add a new paragraph (1) as follows:

(1) On or before the 15th day after the end of each month, upon request by a cooperative association qualifying pursuant to § 995.74 (b), report to such cooperative association the classification of its producer-member milk at each pool plant for such month.

4. Delete § 995.42 and substitute therefor the following:

§ 995.42 *Shrinkage.* The market administrator shall allocate shrinkage at each pool plant as follows:

(a) Compute the total shrinkage of skim milk and butterfat, respectively, at such plant;

(b) To the producer milk at such plant, add the producer milk diverted to such plant and subtract producer milk diverted from such plant to another pool plant; and

(c) Prorate the amount computed pursuant to paragraph (a) of this section between the receipts of skim milk and butterfat, respectively, in producer milk as computed pursuant to paragraph (b) of this section and in other source milk received at such plant in the form of a fluid milk product in bulk.

5. Delete § 995.43 and substitute therefor the following:

§ 995.43 *Transfers.* Skim milk and butterfat disposed of by a handler from a pool plant shall be classified:

(a) As Class I milk if transferred in the form of a fluid milk product in consumer packages to another pool plant;

(b) As mutually claimed by the operators of both plants in their reports submitted pursuant to § 995.30, if transferred or diverted in the form of a fluid milk product in bulk to another pool plant; and

(1) The transferee-plant has an equivalent amount of skim milk and butterfat, respectively, remaining in the claimed classification, following the subtraction of other source milk pursuant to § 995.46 (a) (3) and the corresponding step of § 995.46 (b) and the milk classified and assigned to supply plants pursuant to paragraph (d) of this section;

(2) The amount of transferred or diverted milk claimed as Class I milk during the month does not result in a higher proportion of the total producer milk at the transferee-plant being classified as Class I milk than the proportion classified as Class I milk at the transferor-plant during the month; and

(3) The claimed classification results in the assignment of the maximum available Class I utilization of skim milk and butterfat, respectively, to the producer milk at both plants.

(c) As Class I milk if transferred or diverted to a nonpool plant in the form of milk, skim milk or cream in bulk unless:

(1) The transferring or diverting handler claims classification as Class II milk in his report submitted pursuant to § 995.30 for the month;

(2) The operator of the nonpool plant maintains books and records showing the receipts and utilization of all skim milk and butterfat at such plant which are made available if requested by the market administrator for the purpose of verification of such indicated utilization; and

(3) An equivalent amount of skim milk and butterfat was used in products in Class II milk at such nonpool plant;

(d) A handler operating a distributing plant may assign Class I milk to a supply plant(s) which was a pool plant and which transferred milk to such distributing plant during at least three of the months of September through December, immediately preceding, even though such milk is not transferred physically to

such distributing plant during the current month: *Provided*, That the pounds of Class I milk to be designated as Class II milk in the distributing plant and the corresponding pounds of Class II milk to be designated as Class I milk in the supply plant for the month shall not result in a higher proportion of the total producer milk at such supply plant being classified as Class I milk than the proportion classified as Class I milk at such distributing plant during such month; and

(e) As Class I milk if transferred to a producer-handler in the form of a fluid milk product.

6. At the end of § 995.64, change the period to a colon and add the following: "Provided, That in the case of a producer whose total milk deliveries are subject to the provisions of this part during the current month and whose milk deliveries were priced pursuant to another order issued pursuant to the Act during the preceding period in which quotas are established pursuant to this part, the market administrator shall assign a daily quota in accordance with the foregoing provisions of this section on the basis of such deliveries under such other order during such period."

[F. R. Doc. 58-3120; Filed, Apr. 25, 1958; 8:50 a. m.]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

[21 CFR Part 120]

ESTABLISHMENT OF ZERO TOLERANCES FOR ARAMITE (2-(p-tert-BUTYLPHENOXY)-ISOPROPYL-2-CHLOROETHYL SULFITE)

NOTICE OF PROPOSED RULE MAKING

On February 25, 1955, a notice was published in the FEDERAL REGISTER (20 F. R. 1177) stating that a petition had been filed by United States Rubber Company, New York, New York, requesting the establishment of tolerances of 2 parts per million for residues of 2-(p-tert-butylphenoxy)-isopropyl-2-chloroethyl sulfite, a miticide known under the trade name Aramite, in or on certain fruits and vegetables and tolerances of 5 parts per million in or on certain other raw agricultural commodities.

Following consideration of the petition, the Food and Drug Administration concluded, on the basis of the toxicity data presented, that only zero tolerances should be established. Upon being informed of this conclusion, the petitioner withdrew the petition and substituted therefor a petition requesting tolerances for Aramite of 1 part per million in or on the same commodities. The petitioner also requested that the substituted petition be referred to an advisory committee.

An advisory committee to consider Aramite was appointed in accordance with the Federal Food, Drug, and Cosmetic Act (sec. 408 (g), 68 Stat. 514; 21 U. S. C. 346a (g)). The petition and other data before the Food and Drug Administration were referred to the com-

mittee with a request that it make a report and recommendation thereon.

The committee recommended:

1. That a residue tolerance of 1 part per million be established for Aramite under the provisions of section 408 of the Federal Food, Drug, and Cosmetic Act.

2. That the petitioner be advised to secure acceptable data on the chronic toxicity and carcinogenicity of Aramite at feeding levels between zero and 500 parts per million in the mouse, rat, and dog.

3. That the entire problem be reviewed by this or another committee in 1957, when further laboratory and other data are available.

On the basis of these recommendations and assurance from the petitioner that the recommended feeding studies would be made, an order was published in the FEDERAL REGISTER of September 30, 1955 (20 F. R. 7301), establishing tolerances of 1 part per million for residues of Aramite (2-(*p*-tert-butylphenoxy)-isopropyl-2-chloroethyl sulfite) on certain of the specified raw agricultural commodities and a zero tolerance on certain forage crops.

The data provided by the additional feeding tests now reported by the petitioner indicate that 2-(*p*-tert-butylphenoxy)-isopropyl-2-chloroethyl sulfite at feeding levels of 400 to 500 parts per million tended to cause liver tumors in rats and produced liver damage and adenocarcinoma in the extrahepatic bile ducts of dogs.

On the basis of the entire data now available from feeding tests on laboratory animals, scientists of the Food and Drug Administration believe that Aramite residues should not be tolerated on food crops. If the manufacturer of the pesticide does not agree, he may request, after this notice is published, that the matter be referred to an advisory committee.

Therefore, by virtue of the authority vested in the Secretary of Health, Education, and Welfare by the Federal Food, Drug, and Cosmetic Act (sec. 408 (b), (c), 68 Stat. 514; 21 U. S. C. 346a (b), (c)) and delegated to the Commissioner of Food and Drugs by the Secretary (21 CFR 120.29 (a)), it is proposed by the Commissioner, on his own initiative, that 21 CFR 120.107 be revoked and a new § 120.107, reading as follows, be promulgated:

§ 120.107 *Tolerances for residues of Aramite.* A tolerance of zero is established for residues of Aramite (2-(*p*-tert-butylphenoxy)-isopropyl-2-chloroethyl sulfite) in or on each of the following raw agricultural commodities: Alfalfa, apples, blueberries, cantaloups, celery, cucumbers, grapefruit, grapes, green beans, lemons, muskmelons, oranges, peaches, pears, plums, raspberries, soybeans (whole plant), strawberries, sweet corn (kernels) and forage thereof, tomatoes, watermelons.

A person who has registered or who has submitted an application for the registration of an economic poison under the Federal Insecticide, Fungicide, and Rodenticide Act containing 2-(*p*-tert-butylphenoxy)-isopropyl-2-chloroethyl sulfite may request within 30 days from

publication of this proposal, that the proposal be referred to an advisory committee in accordance with section 408 (e) of the Federal Food, Drug, and Cosmetic Act.

Any interested person is invited at any time prior to the thirtieth day from the date of publication of this notice in the FEDERAL REGISTER to file with the Hearing Clerk, Department of Health, Education, and Welfare, Room 5440, 330 Independence Avenue SW., Washington 25, D. C., written comments on the proposal. Comments may be accompanied by a memorandum or brief in support thereof. All documents shall be filed in quintuplicate.

Dated: April 22, 1958.

[SEAL] GEO. P. LARRICK,
Commissioner of Food and Drugs.

[F. R. Doc. 58-3122; Filed, Apr. 25, 1958;
8:50 a. m.]

Saint Elizabeths Hospital

[42 CFR Part 304]

VOLUNTARY PATIENTS

NOTICE OF PROPOSED RULE MAKING

Pursuant to section 4 of the Administrative Procedure Act (60 Stat. 238, 5 U. S. C. 1003), notice is hereby given

that the Superintendent of Saint Elizabeths Hospital, with the approval of the Secretary of Health, Education, and Welfare, under the authority of section 4, 62 Stat. 572, 32 D. C. Code sec. 415, proposes to amend 42 CFR Part 304 as indicated below. Interested persons may submit written data, views, or arguments relating to the proposed amendment to the Superintendent, Saint Elizabeths Hospital, Washington 25, D. C. All relevant material received not later than thirty days after the publication of this notice will be considered.

Section 304.3 (a) would be amended to read as follows:

(a) A voluntary patient may leave the Hospital in trial visit status for a period not exceeding six months upon approval of the Superintendent and may be permitted to return as a voluntary patient within that period on the basis of the original certification.

Dated: April 4, 1958.

[SEAL] WINFRED OVERHOLSER,
Superintendent,
Saint Elizabeths Hospital.

Approved: April 22, 1958.

E. L. RICHARDSON,
Acting Secretary of Health,
Education, and Welfare.

[F. R. Doc. 58-3125; Filed, Apr. 25, 1958;
8:51 a. m.]

NOTICES

CIVIL AERONAUTICS BOARD

[Docket No. 9221]

CAPITAL AIRLINES, INC.; ENFORCEMENT PROCEEDING

NOTICE OF CANCELLATION OF HEARING

In the matter of the unrealistic schedules filed and published by Capital Airlines, Inc.; Enforcement Proceeding.

Notice is hereby given, pursuant to the Civil Aeronautics Act of 1938, as amended, that the hearing in the above-entitled proceeding now assigned for June 2, 1958, is canceled.

Dated at Washington, D. C., April 22, 1958.

[SEAL] FRANCIS W. BROWN,
Chief Examiner.

[F. R. Doc. 58-3129; Filed, Apr. 25, 1958;
8:52 a. m.]

[Docket No. 9221]

CAPITAL AIRLINES, INC.; ENFORCEMENT PROCEEDING

NOTICE OF PREHEARING CONFERENCE

In the matter of the unrealistic schedules filed and published by Capital Airlines, Inc.; Enforcement Proceeding.

Notice is hereby given, pursuant to the Civil Aeronautics Act of 1938, as amended, that a prehearing conference in the above-entitled proceeding is as-

signed to be held on June 2, 1958, at 10:00 a. m., e. d. s. t., in Room E-210, Temporary Building No. 5, 16th Street and Constitution Avenue NW., Washington, D. C., before Examiner Curtis C. Henderson.

Dated at Washington, D. C., April 22, 1958.

[SEAL] FRANCIS W. BROWN,
Chief Examiner.

[F. R. Doc. 58-3130; Filed, Apr. 25, 1958;
8:52 a. m.]

POST OFFICE DEPARTMENT

TORT CLAIMS

DECENTRALIZATION

Effective May 1, 1958, the function of examination, adjudication, and payment of tort claims for less than \$100 will be transferred from the Office of the General Counsel and the Bureau of Finance to Regional Offices. The Office of the General Counsel will retain responsibility for establishment, modification, and supervision of standards for adjudication of tort claims. Claims for \$100 or more will continue to be examined, adjudicated, and paid at the Department. Where several claims arising from a single accident are presented, and any one of them is for \$100 or more, all of the claims arising from that accident shall be submitted to the Department for

examination, adjudication, and payment.

(R. S. 161, 396, as amended; sec. 1 (b), 63 Stat. 1066; 5 U. S. C. 22, 1332-15, 369)

[SEAL] HERBERT B. WARBURTON,
Acting General Counsel.

[F. R. Doc. 58-3112; Filed, Apr. 25, 1958;
8:48 a. m.]

RESPONSIBILITY FOR AUTHORIZING CLOSING OF POST OFFICE BOXES IN CERTAIN CASES

Under authority granted by Post Office Department Headquarters Circular No. 66, the General Counsel will authorize the closing of post office boxes when used for the purpose of deception, for immoral or improper purposes, or the conduct of a fraudulent or lottery business.

(R. S. 161, 396, as amended; sec. 1 (b), 63 Stat. 1066; 5 U. S. C. 22, 1332-15, 369)

[SEAL] HERBERT B. WARBURTON,
Acting General Counsel.

[F. R. Doc. 58-3113; Filed, Apr. 25, 1958;
8:48 a. m.]

REORGANIZATION AND TRANSFER OF FUNCTIONS IN OFFICES OF POSTMASTER GENERAL, DEPUTY POSTMASTER GENERAL AND GENERAL COUNSEL

The following are excerpts from Headquarters Circular No. 87, of the Post Office Department, dated April 24, 1958:

I. *Purpose.* The purpose of this circular is to effect reorganization and transfer of the judicial functions vested by law in the Postmaster General.

II. *Establishment of a Judicial Officer.* There is established in the Office of the Postmaster General a Judicial Officer for the Post Office Department.

III. *Duties of the Judicial Officer.* (a) Pursuant to the authority of section 1 (b) of Reorganization Plan No. 3 of 1949 (63 Stat. 1066) and of Postmaster General Order No. 55507 dated January 13, 1954 (19 F. R. 361), the Judicial Officer shall have

1. Authority to execute the final decision and order in his own name in proceedings authorized by Sections 224, 232, 255, 256, 257, 259, 259a and 732 of Title 39 United States Code and Sections 1461 and 1463 of Title 18 or the Rules of Practice and procedures of the Department. This shall include proceedings instituted prior to the date of this order.

2. Authority to modify, suspend or rescind any action heretofore taken (including any order issued) or which hereafter may be taken by the Judicial Officer pursuant to the powers, functions, authority and duties conferred upon the Postmaster General by the Sections of Title 39 U. S. Code set forth in paragraph 1 above.

3. Authority to revise or amend the Post Office Department Rules of Practice governing proceedings under the Administrative Procedure Act (5 U. S. Code 1001-1011).

4. Authority to delegate authority to and name an Acting Judicial Officer in his absence and such other authority as the Postmaster General shall delegate to him.

(b) Decisions and orders of the Judicial Officer made under the authority of this order shall be the final departmental decision and order except that the Judicial Officer may refer any proceeding to either the Postmaster General or the Deputy Postmaster General for final decision.

IV. *Hearing Examiners and Docket Clerk.* The Division of Hearing Examiners and the Docket Clerk are hereby transferred from the jurisdiction of the Executive Assistant to the Deputy Postmaster General to the jurisdiction of the Judicial Officer for the Post Office Department.

V. *General Counsel.* The General Counsel is responsible for the initiation and prosecution of proceedings brought under the Rules of Practice established by the Post Office Department.

VI. *Prior Orders and Regulations.* All prior orders and delegations of authority inconsistent with this delegation are hereby revoked. * * *

[SEAL] HERBERT B. WARBURTON,
Acting General Counsel.

[F. R. Doc. 58-3162; Filed, Apr. 25, 1958;
8:55 a. m.]

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[Bureau Order 551, Amdt. 41]

CERTAIN LAND TRANSACTIONS, CROW RESERVATION, MONTANA, AND COLVILLE AND YAKIMA RESERVATIONS, WASHINGTON

REDELEGATION OF AUTHORITY

Order No. 551, as amended, is further amended by addition of a new section under the heading "Functions Relating to Indian Lands and Minerals" to read as follows:

SEC. 32. *Certain land transactions, Crow Reservation, Montana, and Colville and Yakima Reservations, Washington.* (a) The execution of orders transferring interests in tribal and individually owned lands on the Crow Indian Reservation, Montana, in accordance with the act of July 1, 1948 (62 Stat. 1214).

(b) The approval of sales and exchanges of tribal lands of the Confederated Tribes of the Colville Reservation, Washington, and the execution of deeds therefor, and the acquisition of lands for such Tribes pursuant to the act of July 24, 1956 (70 Stat. 626).

(c) The approval of sales and exchanges of tribal lands of the Yakima Tribes of the Yakima Indian Reservation, Washington, and the execution of deeds therefor, and the acquisition of lands for such Tribes pursuant to the act of July 28, 1955 (69 Stat. 392).

GLENN L. EMMONS,
Commissioner.

APRIL 21, 1958.

[F. R. Doc. 58-3103; Filed, Apr. 25, 1958;
8:46 a. m.]

Geological Survey

PUTAH CREEK AND PRINCIPAL TRIBUTARIES,
CALIFORNIA

POWER SITE CLASSIFICATION NO. 444

Pursuant to authority vested in me by the act of March 3, 1879 (20 Stat. 394; 43 U. S. C. 31) and by Departmental Order No. 2333 of June 10, 1947 (43 CFR 4.623; 12 F. R. 4025), the following described land is hereby classified as power sites insofar as title thereto remains in the United States and subject to valid existing rights; and this classification shall have full force and effect under the provisions of section 24 of the act of June 10, 1920, as amended by section 211 of the act of August 26, 1935 (16 U. S. C. 818):

MOUNT DIABLO MERIDIAN, CALIFORNIA

T. 9 N., R. 4 W.,
Sec. 4, lot 8;
Sec. 5, lots 11, 12, and 13.
T. 10 N., R. 4 W.,
Sec. 31, S $\frac{1}{2}$ lot 7, S $\frac{1}{2}$ lot 8, and SW $\frac{1}{4}$ SE $\frac{1}{4}$.
T. 10 N., R. 5 W.,
Sec. 23, N $\frac{1}{2}$ SW $\frac{1}{4}$, and NW $\frac{1}{4}$ SE $\frac{1}{4}$;
Sec. 25, lots 3 and 4, NE $\frac{1}{4}$ SW $\frac{1}{4}$, and W $\frac{1}{2}$ SE $\frac{1}{4}$;
Sec. 26, SE $\frac{1}{4}$ NE $\frac{1}{4}$.
T. 11 N., R. 5 W.,
Sec. 18, lot 15;
Sec. 20, SW $\frac{1}{4}$ NW $\frac{1}{4}$;
Sec. 27, lot 5;
Sec. 28, NE $\frac{1}{4}$ SE $\frac{1}{4}$.
T. 11 N., R. 6 W.,
Sec. 10, NE $\frac{1}{4}$ SE $\frac{1}{4}$;
Sec. 24, N $\frac{1}{2}$ NE $\frac{1}{4}$.
T. 12 N., R. 6 W.,
Sec. 28, SE $\frac{1}{4}$ SE $\frac{1}{4}$;
Sec. 35, NE $\frac{1}{4}$ SW $\frac{1}{4}$.

The area described aggregates 917.89 acres.

Dated: April 21, 1958.

THOMAS B. NOLAN,
Director.

[F. R. Doc. 58-3102; Filed, Apr. 25, 1958;
8:46 a. m.]

ATOMIC ENERGY COMMISSION

[Byproduct Material License 42-9000-2]

RADIATION PRODUCTS CO.

AMENDMENT TO ORDER

In the matter of Dalton L. James doing business as Radiation Products Company, and Radiation Products Co., a corporation, Respondent.

It appears that: a. By order of the Commission dated February 7, 1958, Radiation Products Company, holder of byproduct license No. 42-9000-2, issued February 28, 1957, as a renewal of a pre-existing license, was ordered to refrain from transferring, delivering, or disposing of, without specific written authority from the Commission, any byproduct material in its possession, from receiving into its possession any additional byproduct material, and from encapsulating or otherwise using any byproduct material except for purposes of safe storage of such material; and was directed to show cause at a hearing to be held in Dallas, Texas, on February 24, 1958, why its license should not be suspended or revoked. The basis for this action was an investigation by AEC dis-

closing certain unlawful transfers of byproduct material by or on behalf of Radiation Products Company, and other violations of the Atomic Energy Act and regulations.

b. Respondent filed with the Atomic Energy Commission an answer dated February 13, 1958, to which was attached a detailed statement given on February 12, 1958, to AEC representatives by Dalton L. James, proprietor of Radiation Products Company and president of Radiation Products Co., a corporation. The answer states that respondent does not intend to appear and give evidence at the scheduled hearing other than this written statement, and waives a hearing if AEC feels it can take action on the basis of the statement. A modification of the existing temporary suspension was requested to complete a transfer of certain byproduct material to Temco Aircraft Corporation of Grand Prairie, Texas.

c. Respondent's written statement of February 12, 1958, in brief, admits, among other things, two transfers of Cobalt-60 sources in excess of 10 microcuries to persons unlicensed to possess such byproduct material, and laxity in record keeping and use of regulation signs and labels. The statement, however, offers explanation in the case of the unlawful transfers, setting forth circumstances at the time of transfer which respondent apparently feels shows no wilful intent to violate the law and regulations. In the case of the other violations, respondent states a willingness and a desire to take corrective action.

d. The license which has been temporarily suspended by its own limitation, expired February 28, 1958. No request for a renewal or for a new license has been received by the AEC. The license was issued to Radiation Products Company which was a trade name used by Dalton L. James, doing business as Radiation Products Company. James incorporated the business on or about December 30, 1957, under the name Radiation Products Co., and is the president of the corporation. Possession and use of the byproduct materials under the license was transferred to or assumed by the corporation although no application for a transfer of the license, or for a new license, to the corporation was requested, and none was issued by the AEC.

e. In view of respondent's answer and statement conceding violations of the Atomic Energy Act and regulations, although urging mitigating circumstances in the case of some of the violations, and expressing an intention not to appear at the hearing and requesting that the hearing be dispensed with; and because of the necessity for study of the statement along with AEC field reports, the hearing scheduled for February 24, 1958, was postponed and respondent notified by telegram dated February 21, 1958. Respondent's request for a modification of the temporary suspension in order to complete a transfer to Temco Aircraft Corporation (see paragraph b) was allowed by letter to James from the Director of the Division of Licensing and Regulation, dated February 14, 1958.

f. Upon further study and investigation, AEC regards respondent's written statement of February 12, 1958, to be incomplete in its discussion, admissions, or explanation of violations of law and regulations and regards respondent's conduct since the issuance of the suspension order of February 7, 1958, to be in violation of that order. Specifically, AEC alleges, in addition to previous allegations:

(1) In or about January 1958, respondent furnished 4 sources of Cobalt-60, of approximately 200 millicuries each, to Thomas D. Sparks, who did not have and does not have an AEC license;

(2) In 1957, respondent furnished 1 source of Cobalt-60, of approximately 200 millicuries, to Thomas D. Sparks, who did not have and does not have an AEC license;

(3) In the period approximately from June 1956 through November 1957, respondent engaged in, and employed others on his behalf to engage in, the performance of radiography with licensed byproduct material on the premises of Temco Aircraft Corporation, and of other persons, without a current license to perform such work or to do more than receive, possess, and use licensed byproduct material for encapsulation and re-distribution to AEC licensees.

(4) Respondent has not applied for and Radiation Products Co., a corporation, as successor to Dalton L. James doing business as Radiation Products Company, does not have a license or approval of AEC to possess or use byproduct material now in its possession.

(5) On or about February 23, 1958, and March 10, 1958, on the premises of the Texas Electric Service Company, Monahans, Texas, and on or about February 25, 1958, on the premises of the North Texas Tank Company, Denton, Texas, Dalton L. James engaged in the performance of radiography with two sources of cobalt-60 of approximately 250-300 millicuries each, without any license to so use the byproduct material and contrary to the command of the order of February 7, 1958, not to use any byproduct material and to maintain possession of byproduct material on hand only for purposes of safe storage of such material. On or about March 23, 1958, said James turned over to an AEC representative two cobalt-60 sources he was preparing to use in further radiographic work.

Therefore, it is ordered, That: 1. The caption of this matter is amended to read "In the Matter of Dalton L. James doing business as Radiation Products Company, and Radiation Products Co., a corporation, Respondent."

2. Except as hereinafter provided in paragraph 4, within twenty days after receipt of this order by respondent, AEC will enter the following final order:

A. License No. 42-9000-2 is revoked effective February 7, 1958, except for the transaction which was allowed by the modification of February 14, 1958, and the provisions of paragraph B following.

B. For purposes of effecting a lawful transfer or disposal of the byproduct material now in the possession of respondent or held for him in or about Dallas, Texas, by federal

authorities, respondent is authorized to retain in his possession or receive back such material for a period of fifteen days from the effective date of the final order, and if the lawful transfer or disposal of all of such material is not completed in that time, the remaining material shall be removed in AEC containers without cost to respondent to the AEC Albuquerque Operations Office at Albuquerque, New Mexico, to be there retained pending written instructions from the respondent for a lawful transfer or disposal of such material, provided that the transfer or disposal from the Albuquerque office shall be without expense to the AEC. If said remaining material is not removed from AEC custody within 180 days from date of receipt by AEC, a reasonable storage fee not to exceed 75 cents per day shall be charged to the licensee, of which charge he will be informed.

3. Except as hereinafter provided in paragraph 4, in addition to entering the foregoing final order, AEC will enter the following finding:

In view of the fact that license No. 42-9000-2 was issued for a term of one year and expired by its own limitation on February 28, 1958, AEC finds that if said license had had a full term of one year to run the violations of the license and of the suspension order committed by the respondent would have warranted a revocation of the license embracing the full one year period.

4. In view of respondent's desire not to appear at a hearing and that one not be held, respondent may, if he chooses, submit within fifteen days after receipt of this order, a written statement in further explanation of the additional allegations in paragraph f. above and any reasons why the final order proposed in paragraph 2 above, and the finding proposed in paragraph 3 above, should not be adopted or should be different than proposed. If respondent chooses to contest the additional allegations or proposed final order and finding, he may request a hearing, in which case the entry of the final order and finding shall be stayed and the matter set down for hearing on notice to respondent. Any such statement or request should be addressed to H. L. Price, Director of the Division of Licensing and Regulation, Atomic Energy Commission, Washington 25, D. C.

5. Notwithstanding that byproduct license No. 42-9000-2 expired February 28, 1958, respondent is authorized and directed to maintain custody of the byproduct material in his possession but only under the terms and for the purposes specified in the order of February 7, 1958, as modified by the letter of February 14, 1958, until further order of the Commission.

6. In all other respects, except as modified by the letter of February 14, 1958 and telegram of February 21, 1958, the order of February 7, 1958 shall remain in effect.

Signed and dated at Germantown, Md., April 18, 1958, at 4:00 p. m.

For the Atomic Energy Commission.

H. L. PRICE,
Director, Division of
Licensing and Regulation.

[F. R. Doc. 58-3098; Filed, Apr. 25, 1958; 8:45 a. m.]

[Docket No. 50-71]

ACF INDUSTRIES, INC.

NOTICE OF PROPOSED ISSUANCE OF FACILITY
EXPORT LICENSE

Please take notice that the Atomic Energy Commission (hereinafter "the Commission") proposes to issue, on Form AEC-250, the facility export license described below unless within 15 days after filing of this notice with the Federal Register Division, a request for a formal hearing is filed with the Commission in the manner prescribed by § 2.102 (b) of the Commission's rules of practice (10 CFR Part 2).

1. Pursuant to Section 104 (c) of the Atomic Energy Act of 1954 (hereinafter "the act") and Title 10, CFR, Chapter I, Part 50, "Licensing of Production and Utilization Facilities," and findings by the Commission that (a) the reactor proposed to be exported is a utilization facility; (b) the issuance of a license for the export thereof is within the scope of and is consistent with the terms of an agreement for cooperation with the Government of Sweden; and (c) the issuance of an export license to ACF Industries, Incorporated, will not be inimical to the common defense and security and to the health and safety of the public, the Commission will issue a license to ACF Industries, Incorporated, 30 Church Street, New York, New York, authorizing the export of a 30,000 kilowatt, tank-type, materials testing and research reactor described in the Corporation's license application and amendments to the application filed with the Commission on June 18, 1957, January 23, 1958, and March 31, 1958. The reactor is to be exported to Aktiebolaget Atomenergi, Studsvik Administration, Tystberga, Sweden.

2. The license will be subject to applicable provisions of the Atomic Energy Act of 1954, as amended, and of rules, regulations and orders issued by the Commission thereunder.

3. The license will be effective as of the date of issuance thereof and shall expire on December 31, 1958, unless sooner terminated.

In its review of applications for licenses, sought solely to authorize the export of production or utilization facilities, the Commission does not evaluate the health and safety characteristics of the subject reactors.

Dated at Germantown, Md., this 18th day of April 1958.

For the Atomic Energy Commission.

H. L. PRICE,
Director, Division of
Licensing and Regulation.

[F. R. Doc. 58-3099; Filed, Apr. 25, 1958;
8:45 a. m.]

[Docket No. 50-99]

BABCOCK & WILCOX CO.

NOTICE OF APPLICATION FOR CONSTRUCTION
PERMIT

Please take notice that The Babcock & Wilcox Company, 161 East 42d Street,

New York 17, New York, under section 104c of the Atomic Energy Act of 1954, filed an application dated March 27, 1958 for a permit to construct a research reactor at Lynchburg, Virginia. The proposed reactor has been designated by the company as the "Pool Test Reactor". It will be of the swimming pool type and will be designed to operate at a steady power of 10 kilowatts, with occasional short periods of operation at 200 kilowatts. A copy of the application is on file in the AEC Public Document Room located at 1717 H Street NW., Washington, D. C.

Dated at Germantown, Md., this 18th day of April 1958.

For the Atomic Energy Commission.

H. L. PRICE,
Director, Division of
Licensing and Regulation.

[F. R. Doc. 58-3124; Filed, Apr. 25, 1958;
8:51 a. m.]

[Docket No. 50-101]

NUCLEAR DEVELOPMENT CORPORATION OF
AMERICANOTICE OF APPLICATION FOR CONSTRUCTION
PERMIT

Please take notice that Nuclear Development Corporation of America, 5 New Street, White Plains, New York, under section 104c of the Atomic Energy Act of 1954, filed an application dated April 2, 1958, for a permit to construct a low power (five watt thermal) research reactor. The reactor is to be constructed in the corporation's Critical Experiments Facility at Pawling, New York. A copy of the application is on file in the AEC Public Document Room located at 1717 H Street NW., Washington, D. C.

Dated at Germantown, Md., this 18th day of April 1958.

For the Atomic Energy Commission.

H. L. PRICE,
Director, Division of
Licensing and Regulation.

[F. R. Doc. 58-3100; Filed, Apr. 25, 1958;
8:45 a. m.]

FEDERAL POWER COMMISSION

[Docket No. E-6814]

WISCONSIN MICHIGAN POWER CO. AND
WISCONSIN PUBLIC SERVICE CORP.

NOTICE OF APPLICATION

APRIL 22, 1958.

Take notice that on April 9, 1958, a joint application was filed with the Federal Power Commission pursuant to section 203 of the Federal Power Act by Wisconsin Michigan Power Company of Milwaukee, Wisconsin (hereinafter referred to as "Applicant A") and Wisconsin Public Service Corporation of Milwaukee, Wisconsin (hereinafter referred to as "Applicant B"). Applicant A is incorporated under the laws of the State of Wisconsin and doing business in the States of Wisconsin and Michigan. Applicant B is incorporated under the

laws of the State of Wisconsin and doing business in the States of Wisconsin and Michigan. Both Applicants are engaged in the business of generating, transmitting and distributing electric power. Applicants seek an order authorizing the contractual joint use of certain existing and proposed transmission facilities in the vicinity of Green Bay and De Pere, Wisconsin. Applicants state that the mutual operating advantages resulting from said joint use of facilities adequately compensate each Applicant, and therefore no consideration will be paid to either party by the other. The proposed transaction will have no effect upon any contract of either Applicant for the purchase, sale or interchange of electric energy.

Any person desiring to be heard or to make any protest with reference to said application should on or before the 12th day of May 1958, file with the Federal Power Commission, Washington 25, D. C., petitions or protests in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10). The application is on file and available for public inspection.

[SEAL]

JOSEPH H. GUTHRIE,
Secretary.

[F. R. Doc. 58-3107; Filed, Apr. 25, 1958;
8:47 a. m.]

[Docket No. 8969 etc.]

TEXAS CO. ET AL.

NOTICE OF CONSOLIDATION OF PROCEEDINGS
APRIL 22, 1958.

In the matters of the Texas Company and the Texas Company (Operator) et al.; Docket Nos. G-8969, G-9161, G-9576, G-9593, G-9594, G-9595, G-9596, G-9609, G-10884, G-11321, G-11322, G-11323, G-11324, G-11333, G-11391, G-11710, G-12207, G-12506, G-12635, G-13065, G-13155, G-13162, G-13190, G-13346, G-13433, G-13434, G-13435, G-13466, G-13579, G-13735, G-13924, G-14062, G-14096, G-14248, G-14251.

The proceedings in the matters of the Texas Company and the Texas Company (Operator) et al., Docket Nos. G-8969, G-9161, G-9576, G-9593, G-9594, G-9595, G-9596, G-9609, G-10884, G-11321, G-11322, G-11323, G-11324, G-11333, and G-11391 were consolidated for hearing by Notice of Consolidation issued February 27, 1957. Similar proceedings in Docket Nos. G-9594, G-9595 and G-11710 were consolidated by like notice issued March 4, 1957; and in Docket Nos. G-12207, G-12506 and G-12635 by like notice issued July 3, 1957. All such proceedings relate to proposed changes in rates which have been suspended by the Commission, with provision for public hearings thereon. Hearings in the consolidated proceedings have been held from time to time commencing June 24, 1957, and were on March 17, 1958 adjourned to recommence on July 21, 1958.

The proceedings in the matters of the Texas Company and The Texas Company (Operator) et al., Docket Nos. G-13065, G-13155, G-13162, G-13190,

G-13346, G-13433, G-13434, G-13435, G-13466, G-13579, G-13735, G-13924, G-14062, G-14096, G-14248 and G-14251 also relate to proposed changes in rates which have been suspended by the Commission, with provision for public hearings thereon, and should be heard on the consolidated record heretofore provided for, to the end that they may be disposed of as promptly as possible.

Take notice that the proceedings listed in the last paragraph above will, therefore, be heard on the consolidated record heretofore provided for.

Take further notice that pursuant to the prior orders of the Commission, sections 4 and 15 of the Natural Gas Act, and the Commission's rules of practice and procedure, a public hearing will be held commencing on July 21, 1958, at 10:00 a. m., e. d. s. t., in a Hearing Room of the Federal Power Commission, 441 G Street NW., Washington, D. C., concerning the matters and issues involved in the proceedings hereby consolidated for hearing, as well as the proceedings heretofore so consolidated, all as above set forth.

Interested State commissions may participate as provided by §§ 1.8 and 1.37 (f) of the Commission's rules of practice and procedure (18 CFR 1.8 and 1.37 (f)).

[SEAL] JOSEPH H. GUTRIDE,
Secretary.

[F. R. Doc. 58-3108; Filed, Apr. 25, 1958;
8:47 a. m.]

[Docket No. G-12795]

AMERICAN METAL CLIMAX, INC., ET AL.

ORDER AMENDING ORDER FOR HEARING AND
SUSPENDING PROPOSED CHANGES IN RATES

APRIL 22, 1958.

On August 1, 1956, American Metal Climax, Inc. (Operator) et al. (American Metal), tendered for filing a contract dated March 29, 1956, for the sale to Pacific Northwest Pipeline Corporation of natural gas from the Dakota Sandstone, Bar-X Field, Grand County, Utah, and Mesa County, Colorado, at a rate of 10 cents per Mcf. The contract was accepted for filing and designated as American Metal's FPC Gas Rate Schedule No. 1. The sale from the Dakota Sandstone was authorized by certificate issued March 21, 1957, in Docket No. G-10842.

On May 27, 1957, American Metal tendered for filing a renegotiated contract with Pacific Northwest, dated April 29, 1957, as amended, providing for the sale of natural gas from all formations underlying the acreage included in the original contract and increasing the rate to 12 cents per Mcf. The renegotiated contract, a letter providing for modification or cancellation of the original contract, and the notice of change were designated as American Metal's FPC Gas Rate Schedule No. 2, and Supplement Nos. 1 and 2 thereto, respectively. Amer-

¹ Formerly The American Metal Company, Limited. See order issued April 21, 1958, redesignating proceedings.

ican Metal did not seek certificate authorization for the sale of gas from the additional formations dedicated under its FPC Gas Rate Schedule No. 2. By order issued hereon on June 26, 1957, American Metal's FPC Gas Rate Schedule No. 2, and Supplement Nos. 1 and 2 thereto, were suspended until November 27, 1957, and until such further time as they were made effective in the manner prescribed by the Natural Gas Act.

Subsequently, American Metal tendered for filing the same renegotiated contract of April 29, 1957, as amended, as a separate rate schedule for the sale of natural gas to Pacific Northwest from all formations underlying the acreage, except that from the Dakota Sandstone. It represents that the filing of May 27, 1957, pertained only to the increased rate for the sale of gas from the Dakota Sandstone. Based on such representation, the Commission accepted for filing the contract of April 29, 1957, as American Metal's FPC Gas Rate Schedule No. 3 applicable to sales of natural gas from all formations underlying the acreage included in such contract, except those from the Dakota Sandstone. The Commission also affirmed the temporary authorization granted to American Metal to make these additional sales as heretofore granted in Docket No. G-13765.

The Commission finds: It is appropriate and in the public interest that there should be excluded from this proceeding the sale of natural gas produced from all formations underlying the acreage set forth in American Metal's FPC Gas Rate Schedule No. 2, except that from the Dakota Sandstone.

The Commission orders: The "Order For Hearing and Suspending Proposed Changes in Rates", issued June 26, 1957, in this proceeding, is hereby amended so as to exclude therefrom the sale of natural gas produced from all formations underlying the acreage set forth in American Metal's FPC Gas Rate Schedule No. 2, except that from the Dakota Sandstone.

By the Commission.

[SEAL] JOSEPH H. GUTRIDE,
Secretary.

[F. R. Doc. 58-3111; Filed, Apr. 25, 1958;
8:48 a. m.]

[Docket No. G-13258]

SOUTHERN NATURAL GAS CO.

ORDER ACCEPTING REVISED TARIFF FILING,
PROVIDING FOR HEARING AND TERMINATING
PROCEEDING IN PART

APRIL 18, 1958.

Southern Natural Gas Company (Southern), on August 14, 1957, tendered for filing its FPC Gas Tariff, Fourth Revised Volume No. 1, proposed to become effective September 14, 1957, in supersession of Third Revised Volume No. 1. Southern's Volume No. 1 is applicable to sales from its pipeline system for resale for ultimate public consumption. The tendered filing proposed a general increase in rates of \$18,174,648, or 33.5

percent, based upon adjusted sales for the year ended April 30, 1957.

By order issued September 12, 1957, in Docket No. G-13258, the Commission provided for a hearing concerning the lawfulness of the rates, charges, classifications, and services contained in Southern's proposed FPC Gas Tariff, Fourth Revised Volume No. 1, as tendered for filing on August 14, 1957. And, pending such hearing and decision thereon, the Commission suspended and deferred the use of such proposed revised tariff until February 14, 1958, and until such further time as it may be made effective in the manner prescribed by the Natural Gas Act. No hearings have been held in this proceeding.

On March 31, 1958, Southern tendered for filing its proposed FPC Gas Tariff, Fifth Revised Volume No. 1, intended to supersede the previously proposed Fourth Revised Volume No. 1, and proposed to be made effective as of April 16, 1958. The newly tendered proposed filing would increase Southern's revenues from jurisdictional sales by \$11,022,471, or 20.3 percent, based upon adjusted sales for the year ended April 30, 1957. This is \$7,152,177 less than the increase of \$18,174,648 estimated to result from the previously tendered filing suspended in Docket No. G-13258.

The proposed Tariff, Fifth Revised Volume No. 1 is said by Southern to "represent the result of discussions and negotiations among Southern and its customers, interveners, and State Commission representatives which took place over a period commencing in early December 1957 and terminating in settlement conferences held at Washington from March 6 through March 14, 1958." Southern has also tendered for filing letter agreements with each of its jurisdictional customers, excepting South Georgia Natural Gas Company, by which the customers have agreed to pay for all gas purchased from Southern on and after the effective date of its proposed Fifth Revised Volume No. 1 the rate specified in the applicable rate schedule of said proposed tariff, and otherwise in accordance with the provisions thereof.

We are agreeable to and find acceptable the end result of Southern's proposed Tariff, Fifth Revised Volume No. 1; specifically, increased rates and charges designed to produce increased revenues from jurisdictional sales amounting to \$65,257,726, rather than the amount of \$72,409,903 which would have resulted from the proposed rates previously filed and suspended in Docket No. G-13258. However, we have reservations respecting: (1) the level of the demand and commodity components of the rates proposed in said Fifth Revised Volume No. 1; and (2) the "Conditions Relating to Refunds and Future Rate Reductions," which Southern submitted to the Commission concurrently with its tender of the proposed revised tariff, and which constitute a part of the conditions of the above-mentioned letter agreements between Southern and its customers.

We are thus confronted with a difficult choice. If, because of the reservations as to the two items mentioned before, we do not permit and accept the Fifth Revised

Volume No. 1 in substitution for the Fourth Revised Volume No. 1, Southern, under our present procedures, could immediately make effective the higher rates proposed in the earlier filing, but subject to possible refund. Thus, Southern's customers, and presumably the consumers served by them, would be required to pay immediately, subject to possible refund it is true, rates that are \$7,000,000 higher than those provided in the Fifth Revised Volume No. 1. On the other hand, if we permit and accept the Fifth Revised Volume No. 1, the consumers get the immediate benefit of the lesser rates, which would produce total firm jurisdictional revenues to Southern in an amount acceptable to all parties, including customers, representatives of intervening cities and public service commissions, and which we are willing to agree to and accept.

We have decided to follow the latter course. We have further decided, however, to enter upon a hearing pursuant to section 4 (e) of the Natural Gas Act, as hereinafter provided and ordered, which is to be limited to two issues only: (1) The level of the demand and commodity components of the rates; and (2) the "Conditions Relating to Refunds and Future Rate Reductions." Since we agree to and accept Southern's jurisdictional revenues of \$65,257,726 for the test period, as adjusted, this item will not be a subject of further controversy in such hearing.

In reaching this decision we have concluded that it would be undesirable in this instance to permit and accept the substitute rates, subject to a provision that refunds might be required if, as a result of the hearing, the demand and commodity components of the rates are determined and fixed at different levels. In such event, in order for Southern to earn the jurisdictional revenues which we have decided it should be permitted, Southern would have to collect additional amounts from those of its customers who would not get refunds. Assuming this could be legally done, it would be difficult if not impossible of accomplishment. We, of course, could not order an increase in rates to these customers to be applied retroactively.

We are mindful, too, that there appears to be no immediate prospect of an occasion calling for application of the "Conditions Relating to Refunds and Future Rate Reductions." Thus, an early hearing and decision herein on the limited issues would provide reasonable assurance of protection against application of these "Conditions" should they be hereafter determined to be inappropriate or unreasonable and others prescribed.

As noted previously, South Georgia Natural Gas Company has not agreed to accept the increased rates proposed to be made applicable for purchases by it from Southern. South Georgia Natural Gas Company has pending before the Commission, in Docket No. G-13550, proposed increased rates. In recognition of these facts, Southern, on April 11, 1958, filed a motion to make effective as of April 16, 1958, its proposed

Rate Schedule P-2, which is set forth on Original Sheets Nos. 19, 20, 21, and 22 of said Fifth Revised Volume No. 1.

The Commission finds: Good cause has been shown for accepting Southern's FPC Gas Tariff, Fifth Revised Volume No. 1, for filing in substitution for the previously filed and suspended Fourth Revised Volume No. 1 of said Tariff, and for allowing it to become effective as of April 16, 1958, subject to the terms and conditions hereinafter ordered.

The Commission orders:

(A) Southern Natural Gas Company's FPC Gas Tariff, Fifth Revised Volume No. 1, be and it is hereby accepted for filing in substitution for its Fourth Revised Volume No. 1 to said Tariff to be effective as of April 16, 1958: *Provided, however,* That Original Sheets Nos. 19, 20, 21, and 22 of said Fifth Revised Volume No. 1 shall not become so effective except upon execution by Southern of the agreement and undertaking described in paragraph (C) below, and acceptance thereof, evidenced by a letter addressed to Southern by the Secretary of the Commission.

(B) Southern shall refund at such times and in such amounts to South Georgia Natural Gas Company, and in such manner as may be required by final order of the Commission, the portion of the increased rates and charges found by the Commission in this proceeding not justified, together with interest thereon at the rate of six percent per annum from the date of payment to Southern until refunded; shall bear all costs of any such refunding; shall keep accurate accounts in detail of all amounts received by reason of the increased rates or charges effective as of April 16, 1958, for each billing period, specifying by whom and in whose behalf such amounts were paid; and shall report (original and four copies), in writing and under oath, to the Commission monthly for each billing period, the billing determinants of natural-gas sales to such purchaser and the revenues resulting therefrom as computed under the rates in effect immediately prior to April 16, 1958, and under the rates allowed by this order to become effective, together with the differences in the revenues so computed.

(C) As a condition of this order, within 10 days from the date of issue of this order, Southern shall execute and file with the Secretary of the Commission its written agreement and undertaking to comply with the terms and conditions of paragraph (B) above, signed by a responsible officer of the corporation evidenced by proper authority from the Board of Directors, as follows:

In conformity with the requirements of the order issued _____, in Docket No. G-13258, Southern Natural Gas Company hereby agrees and undertakes to comply with the terms and conditions of paragraph (B) of said order and has caused this agreement and undertaking to be executed and sealed in its name by its officers, thereupon duly authorized in accordance with the terms of the resolution of its Board of Directors, a

certified copy of which is appended hereto, this _____ day of _____, 1958.

SOUTHERN NATURAL
GAS COMPANY,

By _____
President.

Attest:

Secretary.

(D) Pursuant to the authority of the Natural Gas Act, particularly sections 4 (e) and 15, thereof, the Commission's rules of practice and procedure, and the regulations under the Natural Gas Act (18 CFR Ch. I), a public hearing be held upon a date to be hereafter fixed, limited to and concerning only (i) the level of the demand and commodity components of the rates contained in Southern's FPC Gas Tariff, Fifth Revised Volume No. 1, and (ii) the "Conditions Relating to Refunds and Future Rate Reductions".

(E) Unless advised to the contrary within ten (10) days from the date of its issuance, this order shall be deemed to have been accepted by all parties.

(F) If Southern shall, in conformity with the terms and conditions of paragraph (B) of this order, make the refunds as may be required by order of the Commission, the undertaking shall be discharged, otherwise it shall remain in full force and effect.

(G) The proceedings in this Docket No. G-13258 are hereby terminated insofar as it concerns Fourth Revised Volume No. 1 of Southern's FPC Gas Tariff.

By the Commission.

[SEAL] JOSEPH H. GUTRIDE,
Secretary.

[F. R. Doc. 58-3109; Filed, Apr. 25, 1958;
8:47 a. m.]

[Docket No. G-14738]

NORTHERN NATURAL GAS CO.

NOTICE OF APPLICATION AND DATE OF
HEARING

APRIL 22, 1958.

Take notice that Northern Natural Gas Company (Applicant), a Delaware corporation with its principal place of business in Omaha, Nebraska, filed an application on March 21, 1958, for a certificate of public convenience and necessity authorizing the construction and operation of a tap and metering facilities on Applicants 8-inch pipeline in Freeborn County, Minnesota. The purpose of the tap is to render firm service for cooking facilities and interruptible service for space heating requirements to a newly completed school house of the Joint Independent Consolidated School District No. 27 of Mower and Freeborn Counties, Minnesota.

Firm natural gas requirements are estimated not to exceed 1.25 Mcf per day and interruptible gas requirements not to exceed 100 Mcf per day. The cost of the facilities is estimated to be \$3,200 to be financed with funds on hand, and to be partly defrayed with a \$1,500 grant in aid of construction from the school district.

The firm volumes are to be provided from the existing firm volumes available to the Peoples Division.

This matter is one that should be disposed of as promptly as possible under the applicable rules and regulations and to that end:

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act, and the Commission's rules of practice and procedure, a hearing will be held on May 22, 1958, at 9:30 a. m., e. d. s. t., in a hearing room of the Federal Power Commission, 441 G Street NW., Washington, D. C., concerning the matters involved in and the issues presented by such application: *Provided, however*, That the Commission may, after a non-contested hearing, dispose of the proceedings pursuant to the provisions of § 1.30 (c) (1) or (2) of the Commission's rules of practice and procedure. Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Protests or petitions to intervene may be filed with the Federal Power Commission, Washington 25, D. C., in accordance with the rules of practice and procedure (18 CFR 1.8 or 1.10) on or before May 12, 1958. Failure of any party to appear at and participate in the hearing shall be construed as waiver of and concurrence in omission herein of the intermediate decision procedure in cases where a request therefor is made.

[SEAL] JOSEPH H. GUTRIDE,
Secretary.

[F. R. Doc. 58-3110; Filed, Apr. 25, 1958;
8:47 a. m.]

[Project No. 1927 Oregon]

CALIFORNIA OREGON POWER CO.

NOTICE OF MODIFICATION OF LAND WITHDRAWAL; OREGON; LEMOLO NO. 2 DEVELOPMENT

APRIL 22, 1958.

Conformable to the provisions of section 24 of the act of June 10, 1920, as amended, this Commission gave notice on January 26, 1955, of the reservation of approximately 5,480 acres of lands of the United States pursuant to the filing on September 15, 1952, of an application for amendment of license by the California Oregon Power Company, for Project No. 1927, to include Lemolo No. 2 Development.

The Licensee on November 12, 1957, filed an application for further amendment of the license, supported by revised exhibits, establishing a final project boundary of the Lemolo No. 2 Development as constructed.

Under such circumstances and in accordance with section 24 of the act of June 10, 1920, notice is hereby given that the lands hereinafter described, insofar as title thereto remains in the United States, are included in Project No. 1927, and under said section 24, are, from said

date of filing of the application for amendment of License (November 12, 1957) reserved from all forms of disposal under the laws of the United States until otherwise directed by the Commission or by Congress.

WILLAMETTE MERIDIAN, OREGON

All portions of the following subdivisions lying within the project boundaries as delimited on maps designated "Exhibit J-19, sheet 1", and "Exhibits K sheets 1 through 7" entitled "Application for Amendment of License, Project No. 1927, Lemolo No. 2 Development," and filed in the office of this Commission on November 14, 1957.

- T. 26 S., R. 3 E.,
Sec. 24: NE $\frac{1}{4}$ NE $\frac{1}{4}$, S $\frac{1}{2}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$, NE $\frac{1}{4}$ SW $\frac{1}{4}$;
Sec. 25: NE $\frac{1}{4}$, N $\frac{1}{2}$ SE $\frac{1}{4}$.
T. 25 S., R. 4 E., (unsurveyed)
Sec. 36: S $\frac{1}{2}$ NE $\frac{1}{4}$, NE $\frac{1}{4}$ SW $\frac{1}{4}$, S $\frac{1}{2}$ SW $\frac{1}{4}$, N $\frac{1}{2}$ SE $\frac{1}{4}$.
T. 26 S., R. 4 E., (unsurveyed)
Sec. 1: N $\frac{1}{2}$ NW $\frac{1}{4}$;
Sec. 2: NE $\frac{1}{4}$ NE $\frac{1}{4}$, S $\frac{1}{2}$ NE $\frac{1}{4}$, N $\frac{1}{2}$ SW $\frac{1}{4}$, SW $\frac{1}{4}$ SW $\frac{1}{4}$, NW $\frac{1}{4}$ SE $\frac{1}{4}$;
Sec. 3: SE $\frac{1}{4}$ SE $\frac{1}{4}$;
Sec. 5: E $\frac{1}{2}$ SW $\frac{1}{4}$, SW $\frac{1}{4}$ SE $\frac{1}{4}$;
Sec. 8: E $\frac{1}{2}$, E $\frac{1}{2}$ W $\frac{1}{2}$;
Sec. 9: S $\frac{1}{2}$ NE $\frac{1}{4}$, SW $\frac{1}{4}$, N $\frac{1}{2}$ SE $\frac{1}{4}$;
Sec. 10: N $\frac{1}{2}$ NE $\frac{1}{4}$, SW $\frac{1}{4}$ NE $\frac{1}{4}$, NW $\frac{1}{4}$;
Sec. 17: NW $\frac{1}{4}$;
Sec. 18: E $\frac{1}{2}$ NE $\frac{1}{4}$, S $\frac{1}{2}$ SW $\frac{1}{4}$, SE $\frac{1}{4}$;
Sec. 19: N $\frac{1}{2}$, W $\frac{1}{2}$ SW $\frac{1}{4}$;
Sec. 30: NW $\frac{1}{4}$ NW $\frac{1}{4}$.
T. 25 S., R. 5 E., (unsurveyed)
Sec. 31: N $\frac{1}{2}$ NE $\frac{1}{4}$, SW $\frac{1}{4}$ NE $\frac{1}{4}$, NE $\frac{1}{4}$ NW $\frac{1}{4}$, S $\frac{1}{2}$ NW $\frac{1}{4}$;
Sec. 32: NW $\frac{1}{4}$ NE $\frac{1}{4}$, N $\frac{1}{2}$ NW $\frac{1}{4}$.

All lands lying within 100 feet of the center line survey of the transmission line right-of-way as delimited upon maps designated "Exhibit K sheets 7 and 8" entitled "Application For Amendment of License, Project No. 1927, Lemolo No. 2 Development," and filed in the office of the Commission on November 14, 1957, affecting portions of the following subdivisions, portions of which occupy lands heretofore reserved for Lemolo No. 1 and Toketee Developments of this project, (No. 1927).

- T. 26 S., R. 3 E.,
Sec. 25: S $\frac{1}{2}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$ SW $\frac{1}{4}$, W $\frac{1}{2}$ SE $\frac{1}{4}$;
Sec. 36: NE $\frac{1}{4}$ NW $\frac{1}{4}$, S $\frac{1}{2}$ NW $\frac{1}{4}$, N $\frac{1}{2}$ SW $\frac{1}{4}$.

The general determination made by the Commission at its meeting of April 17, 1922 (2d Ann. Rept. 128), with respect to lands reserved for Transmission line purposes only, is applicable to the above described land reserved for that purpose.

This notice modifies and supersedes, in its entirety, the notice of January 26, 1955, pertaining to the Lemolo No. 2 development and the area now reserved for project purposes is reduced to 481.80 acres of which approximately 234.47 acres has been heretofore reserved in Power Site Classification No. 162. These lands are all within the Umpqua National Forest.

Copies of the project maps (FPC Nos. 1927-198 to 206 inclusive) have been transmitted to the Bureau of Land Management, Geological Survey and Forest Service.

[SEAL] JOSEPH H. GUTRIDE,
Secretary.

[F. R. Doc. 58-3106; Filed, Apr. 25, 1958;
8:47 a. m.]

[Docket No. G-14405]

PIKE NATURAL GAS CO.

NOTICE OF APPLICATION

Correction

In Federal Register Document 58-2758, published at page 2436 in the issue for Tuesday, April 15, 1958, the bracketed docket number, now reading "G-14465", should read "G-14405" as set forth above.

GENERAL SERVICES ADMINISTRATION

[Administrative Order 236]

CRUDE PETROLEUM AND PETROLEUM PRODUCTS

APPLICATION OF BUY AMERICAN ACT TO CERTAIN PURCHASES

APRIL 24, 1958.

1. *Purpose.* This order prescribes uniform policies and procedures for the application of the Buy American Act (act of March 3, 1933; 47 Stat. 1520; 41 U. S. C. 10a-d) to purchases in the United States of imported crude petroleum or of petroleum products refined in the United States and derived in whole or in part from imported crude petroleum, and implements the provisions of Executive Order 10761 dated March 27, 1958, entitled "Government Purchases of Crude Petroleum and Petroleum Products."

2. *General.* a. The President, upon advice from the Special Committee to Investigate Crude Oil Imports, has determined that essential national security interests are adversely affected by the purchase by the United States of crude petroleum imported in quantities in excess of those now or hereafter specified under the Voluntary Oil Import Program or of petroleum products refined in the United States and composed of or derived from such crude petroleum, in whole or in part, and that such purchases would not be in the public interest.

b. Pursuant to the above determination, the President, on March 27, 1958, issued Executive Order 10761 in which all executive departments and agencies were requested to reexamine existing policy with respect to application of the Buy American Act to petroleum products and to apply the provisions of that act so that (1) unless a domestic product is unavailable or its cost is determined to be unreasonable, the purchase of a non-domestic petroleum product will be made only if it is a complying petroleum product and (2) in considering bids no price differential will be applied between domestic and complying petroleum products. In addition, the President directed that Executive Order No. 10582 of December 17, 1954, Prescribing Uniform Procedures for Certain Determinations Under the Buy American Act, shall not be applicable to crude petroleum and petroleum products.

3. *Definitions.* As used in this order the following terms shall have the meanings hereinafter indicated.

a. "Domestic petroleum product" means crude petroleum of wholly domes-

the origin and any product refined in the United States entirely from such crude petroleum.

b. "Nondomestic petroleum product" means crude petroleum not wholly of domestic origin and any product refined in the United States which is not derived entirely from crude petroleum of domestic origin.

c. "Complying petroleum product" means crude petroleum of foreign origin or any product refined in the United States in whole or in part from crude petroleum of foreign origin, all of which has been, or will be, imported by a firm which, during the period of contract performance and for the three months preceding the month in which a bid is submitted to General Services Administration, has imported crude petroleum in compliance with the Voluntary Oil Import Program.

d. "Foreign refined product" means any petroleum product refined in a refinery not located in the United States or any place subject to the jurisdiction of the United States.

4. *Rescission of determinations under the Buy American Act with respect to petroleum products and residual fuel oil.* The determinations of the Administrator of General Services under the Buy American Act, dated September 17, 1954, and March 21, 1955, exempting certain contracts and purchases by the General Services Administration of petroleum products and residual fuel oil from the restrictions of the Buy American Act, are hereby rescinded.

5. *New determination under the Buy American Act with respect to purchases of crude petroleum and petroleum products.* Pursuant to the authority contained in section 2 of the act of March 3, 1933 (Buy American Act) and in furtherance of the provisions of Executive Order 10761, dated March 27, 1958, it is hereby determined to be inconsistent with the public interest for any purchase to be made by the General Services Administration of a nondomestic petroleum product which is not a complying petroleum product, unless a domestic product is unavailable or its cost is determined to be unreasonable. In considering bids, no price differential shall be applied between domestic and complying petroleum products.

6. *Contracting procedures.* The following procedures shall be applied uniformly throughout the General Services Administration in contracting for the purchase of crude petroleum and petroleum products:

a. *Contract clause.* Every contract entered into by the General Services Administration on and after April 26, 1958, for the purchase in the United States of a nondomestic petroleum product shall contain the following clause:

The Contractor agrees that during the contract period he will comply in all respects with the Voluntary Oil Import Program.

With respect to invitations for bids which have been issued without provision for inclusion of the above clause and in response to which no bids have been received, such invitations for bids should be amended where practical, to require the inclusion of the above clause

in any contract awarded thereunder. Bids received in response to invitations for bids which did not include the above required clause shall not be accepted unless the bidder agrees to the inclusion of the clause in his contract.

b. *Acceptable bids.* In order for any bid to supply the Government with crude petroleum or petroleum products to be acceptable for consideration and evaluation under this order, such bid must offer to supply the Government either with a domestic petroleum product or a complying petroleum product: *Provided, however,* That a low bid offering a nondomestic petroleum product which is not a complying petroleum product may be accepted where (1) no bid offering a domestic petroleum product is received in response to the invitation for bids, or (2) the cost to the Government under the lowest bid offering a domestic petroleum product is determined to be unreasonable.

c. *Evaluation of bids.* (1) In the evaluation of bids, no price differential shall be applied between bids offering a domestic petroleum product and bids offering a complying petroleum product.

(2) The cost of a domestic petroleum product offered in response to an invitation for bids shall be deemed to be unreasonable in relation to the cost of a nondomestic petroleum product which is not a complying petroleum product, offered under the same invitation and constituting the apparent low bid, if the delivered cost of the domestic product exceeds the cost of such nondomestic petroleum product, delivered at the place of delivery specified in the invitation for bids by more than twenty-five percentum of the cost of such nondomestic product so computed.

(3) The cost of a domestic petroleum product offered in response to an invitation for bids shall be deemed to be unreasonable in relation to the cost of a foreign refined product offered under the same invitation and constituting the apparent low bid if the delivered cost of the domestic product exceeds the cost of the foreign refined product delivered at the place of delivery specified in the invitation for bids and including any applicable duty (whether or not a duty-free entry certificate may be issued) by more than six percentum of the cost of the foreign refined product so computed.

(4) In each instance the contract shall be awarded to the lowest acceptable bidder determined pursuant to paragraphs (1), (2), and (3) above, to the extent applicable.

7. *Determination of a complying petroleum product.* In determining whether a nondomestic petroleum product offered by a supplier is a complying petroleum product within the terms of this order and Executive Order 10761, a certificate issued to the supplier by the Administrator, Voluntary Oil Import Program, of the supplier's compliance with the Voluntary Oil Import Program shall be conclusive evidence that the nondomestic petroleum product offered by the supplier is a complying petroleum product. In the absence of such a certificate, a certification or representation of compliance with the Voluntary Oil Im-

port Program made by the supplier shall be considered presumptive evidence of the fact that the nondomestic petroleum product offered by such supplier is a complying petroleum product.

8. *Inapplicability of Executive Order No. 10582.* As provided in Executive Order No. 10761, Executive Order No. 10582 of December 17, 1954, entitled "Prescribing Uniform Procedures for Certain Determinations Under the Buy American Act," shall not be applicable to General Services Administration purchases of crude petroleum and petroleum products.

9. *Applicability.* The provisions of this order shall be applicable to all central and regional office purchases of crude petroleum and petroleum products.

10. *Effective date.* The provisions of this order are effective immediately.

FRANKLIN FLOETE,
Administrator.

[F. R. Doc. 58-3179; Filed, Apr. 25, 1958;
10:54 a. m.]

INTERSTATE COMMERCE COMMISSION

[No. 32255]

MONTANA INTRASTATE FREIGHT RATES AND CHARGES

NOTICE OF INVESTIGATION AND HEARING

At a session of the Interstate Commerce Commission, Division 2, held at its office in Washington, D. C., on the 14th day of April A. D. 1958.

It appearing that a petition dated August 14, 1957, was filed on August 19, 1957, on behalf of the Chicago, Burlington & Quincy Railroad Company and other common carriers by railroad operating to, from and between points in the State of Montana, in interstate and intrastate commerce, averring that in Ex Parte No. 196, Increased Freight Rates, 1956, 298 I. C. C. 279, and Ex Parte No. 206, Increased Freight Rates and Charges, Eastern, Western and Southern Territories, 1956-1957, 299 I. C. C. 429, 299 I. C. C. 557, and 300 I. C. C. 633, the Commission authorized carriers, subject to the Interstate Commerce Act, parties thereto, to make certain increases in their rates and charges for interstate application throughout the United States; and that increases under such authorizations have been made;

It further appearing that the petitioners allege that the Board of Railroad Commissioners of the State of Montana has failed to authorize or permit petitioners to establish for the intrastate transportation upon their railroads in Montana increases in freight rates and charges corresponding to those authorized by this Commission and made by petitioners for application on interstate traffic in the proceedings above cited, which refusal causes and results in undue and unreasonable advantage, preference, and prejudice as between persons and localities in intrastate commerce, on the one hand, and interstate commerce, on the other hand, and in undue, unreasonable and unjust

discrimination against interstate and foreign commerce, in violation of section 13 of the Interstate Commerce Act;

It further appearing that there have been brought in issue by the said petition rates and charges made or imposed by authority of the State of Montana;

And it further appearing that the Board of Railroad Commissioners of the State of Montana on September 30, 1957, filed a reply to petitioners' petition:

It is ordered. That, in response to the said petition, an investigation be, and it is hereby, instituted, and that a hearing be held therein for the purpose of receiving evidence from the respondents hereinafter designated and any other interested parties to determine whether the rates and charges of the common carriers by railroad, or any of them, operating in the State of Montana, for the intrastate transportation of property, made or imposed by authority of the State of Montana, cause or will cause, by reason of the failure of such rates and charges to include increases corresponding to those permitted by this Commission for interstate traffic in Ex Parte No. 196 and No. 206, supra, any undue or unreasonable advantage, preference, or prejudice, as between person or localities in intrastate commerce, on the one hand, and interstate or foreign commerce, on the other hand, or any undue, unreasonable, or unjust discrimination against interstate or foreign commerce in violation of section 13 of the Interstate Commerce Act, and to determine what rates and charges, if any, or what maximum or minimum, or maximum and minimum, rates and charges shall be prescribed to remove the unlawful advantage, preference, prejudice, or discrimination, if any, that may be found to exist;

It is further ordered. That all common carriers by railroad operating within the State of Montana, which are subject to the jurisdiction of this Commission, be, and they are hereby, made respondents to this proceeding; that a copy of this order be served upon each of the said respondents, and that the State of Montana be notified of the proceeding by sending copies of this order and of said petition by registered mail to the Governor of the said State, and to the Board of Railroad Commissioners of the State of Montana at Helena, Mont.;

It is further ordered. That notice of this proceeding be given to the public by depositing a copy of this order in the office of the Secretary of the Commission at Washington, D. C., for public inspection, and by filing a copy with the Director, Division of the Federal Register, Washington, D. C.;

And it is further ordered. That this proceeding be assigned for hearing at such time and place as the Commission may hereafter designate.

By the Commission, Division 2.

[SEAL] HAROLD D. McCoy,
Secretary.

[F. R. Doc. 58-3128; Filed, Apr. 25, 1958;
8:52 a. m.]

SECURITIES AND EXCHANGE COMMISSION

[File No. 812-1148]

ONE WILLIAM STREET FUND, INC. AND
LEHMAN BROTHERS

NOTICE OF FILING OF APPLICATION

Notice is hereby given that The One William Street Fund, Inc. ("Fund"), a registered closed-end management investment company, and Lehman Brothers ("Lehman"), the proposed investment adviser of the Fund, have filed an application pursuant to Section 6 (c) of the Investment Company Act of 1940 ("act") for an order of the Commission exempting the Fund from the provisions of sections 16 (a) and 32 (a), and Lehman from the provisions of section 15 (a) of the act.

The application discloses that the Fund was organized on April 2, 1958, under the laws of the State of Maryland. The Fund registered on April 7, 1958, under the act and has filed a registration statement under the Securities Act of 1933 covering 3,000,000 shares of its capital stock. Fund proposes to acquire the securities and cash of Aurora Corporation simultaneously with the delivery of the Fund's capital stock to the underwriters. Thereafter, it is contemplated that Fund will become an open-end company, and upon completion of the initial offering, shares of the Fund will be offered on a continuous basis by William Street Sales, Inc., as sole distributor. Lehman is registered as a broker-dealer under the Securities Exchange Act of 1934 and proposes to act as principal underwriter for the initial offering of Fund shares, and thereafter as investment adviser for the Fund.

Prior to beginning operation as an investment company, the Fund proposes to enter into an investment advisory contract with Lehman. The fiscal year of the Fund ends on December 31, and the date of its first annual meeting of stockholders is fixed by its by-laws as March 17, 1959. Since the Fund will have no stockholders prior to the public offering, it is proposed to take appropriate stockholder action at the first annual meeting of stockholders with respect to an investment advisory contract, the selection of the Fund's independent public accountants, and the election of directors.

The Fund requests an order of the Commission under section 6 (c) of the act exempting the Fund from the provisions of sections 16 (a) and 32 (a), and Lehman from the provisions of section 15 (a) of the act so that the Fund may operate for a limited period without stockholder election of directors, without stockholder approval of the selection of independent public accountants, and without stockholder approval of an investment advisory contract as required, respectively, by those sections of the act, until stockholder approval can be obtained with respect to these matters at the first annual meeting of stockholders scheduled to be held on March 17, 1959.

Section 6 (c) of the act provides, among other things, that the Commission, by order upon application, may conditionally or unconditionally exempt any person from any provision or provisions of the act or of any rule or regulation thereunder, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the act.

Notice is further given that any interested person may, not later than May 6, 1958, at 5:30 p. m., submit to the Commission in writing any facts bearing upon the desirability of a hearing on the matter and may request that a hearing be held, such request stating the nature of his interest, the reasons for such request and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission should order a hearing thereon. Any such communication or request should be addressed: Secretary, Securities and Exchange Commission, Washington 25, D. C. At any time after said date, the application may be granted as provided in Rule N-5 of the rules and regulations promulgated under the act.

By the Commission.

[SEAL] ORVAL L. DuBois,
Secretary.

[F. R. Doc. 58-3114; Filed, Apr. 25, 1958;
8:48 a. m.]

[File No. 30-196]

CITIES SERVICE CO.

NOTICE OF FILING OF APPLICATION FOR ORDER
DECLARING APPLICANT HAS CEASED TO BE A
HOLDING COMPANY AND ORDER FOR HEARING
THEREON

APRIL 21, 1958.

Notice is hereby given that Cities Service Company ("Cities"), a registered holding company, has filed an application, and an amendment thereto, with this Commission, pursuant to section 5 (d) of the Public Utility Holding Company Act of 1935 ("act"), for an order declaring that it has ceased to be a holding company.

The application states that Cities is a corporation organized under the laws of the State of Delaware having its principal executive offices in New York, New York, and that it is a company owning securities of companies engaged principally in the oil and natural gas business. It registered as a public utility holding company under section 5 (a) of the act on January 29, 1941, and has ever since been a registered holding company under the act.

Cities states that since such registration it has disposed of all its interests in public utility companies, and that it no longer has any interest, direct or indirect, in any public utility company.

The application further states that on October 1, 1952, in proceedings entitled "In the Matter of Arkansas Natural Gas Corporation, Cities Service Company (File No. 54-186); Arkansas Natural Gas

Corporation and its Subsidiaries and Cities Service Company (File Nos. 59-93 and 70-1804)", the Commission entered an order providing, among other things, for a reservation of jurisdiction with respect to "the resolution of the problems presented by the continued existence of a minority public interest in Fuel Oil (Arkansas Fuel Oil Corporation) after consummation of the plan." The application also states that it is understood that such retention of jurisdiction will continue after the entry of the order herein applied for, and that applicant will be free to contest any action taken or proposed to be taken thereunder on grounds other than the entry of the order herein applied for.

It further appears that on September 20, 1957, the Commission issued an order, pursuant to section 11 (b) (2) of the act, in the consolidated proceedings noted above, directed to Cities and to Arkansas Fuel Oil Corporation ("Fuel Oil") ordering them, respectively, to proceed with due diligence to take appropriate action to effect the elimination of the 48.5 percent public minority stock interest in Fuel Oil or the disposition by Cities of its stock interest in Fuel Oil. Cities, Fuel Oil, and a stockholder of the latter company, have filed petitions for review with the United States Court of Appeals for the Third Circuit requesting that Court to set aside the order of the Commission. That review proceeding is now pending.

It appearing to the Commission that it is appropriate in the public interest and in the interest of investors that a hearing be held with respect to the application of Cities under section 5 (d) of the act:

It is ordered, That a hearing be held on May 13, 1958, at 10 a. m. at the offices of the Commission, 425 Second Street NW., Washington, D. C., in respect of Cities' application for an order declaring that it has ceased to be a holding company. Any person desiring to be heard, or otherwise to participate in the proceeding, will file with the Secretary of the Commission, on or before May 8, 1958, a written request in respect thereof as provided in Rule XVII of the Commission's rules of practice.

It is further ordered, That Sidney J. Feller, or any other officer or officers of this Commission designated by it for that purpose, shall preside at such hearing. The officer so designated to preside at such hearing is hereby authorized to exercise all powers granted to this Commission under section 18 (c) of the act, and to a hearing officer under the Commission's rules of practice.

The Division of Corporate Regulation of the Commission having advised the Commission that it has made a preliminary examination of the application, and that, upon the basis thereof, the following matters and questions are presented for consideration, without prejudice to the specification of additional matters and questions upon further examination:

(1) Whether Cities has ceased to be a holding company.

(2) Whether it is appropriate and proper that the Commission grant the requested application prior to compliance by Cities with the September 20, 1957 section 11 (b) (2) order; and, if so, whether the effective date of any order issued under section 5 (d) should be delayed until Cities has complied with the September 20, 1957 section 11 (b) (2) order, or such other order as may be properly entered pursuant to section 11 (b) (2) of the act.

(3) Whether Cities has kept its accounts in accordance with the Uniform System of Accounts for Public Utility Holding Companies prescribed in Rule 26 under the act; and, if not, what action should be required of the company to conform its accounting thereto.

(4) Whether any terms or conditions should be imposed in connection with the issuance of any order issued under section 5 (d) as necessary for the protection of investors and, if so, the nature and provisions of such terms and conditions.

It is further ordered, That at said hearing attention should be directed to the matters and questions herein specified.

It is further ordered, That the Secretary of the Commission shall serve notice of the hearing by serving copies of this notice and order by registered mail upon Cities; that notice shall be given to all other persons by publication of this notice and order in the FEDERAL REGISTER; and that a general release of this Commission in respect of the application and hearing shall be distributed to the press and mailed to the persons appearing on the mailing list of the Commission for releases under the Public Utility Holding Company Act of 1935.

By the Commission.

[SEAL]

ORVAL L. DuBOIS,
Secretary.

[F. R. Doc. 58-3115; Filed, Apr. 25, 1958;
8:48 a. m.]

[File No. 31-646]

IDEAL CEMENT CO.

NOTICE OF FILING OF APPLICATION FOR EXEMPTION

APRIL 21, 1958.

Notice is hereby given that Ideal Cement Company ("Ideal"), a Colorado corporation, has filed an application and an amendment thereto pursuant to section 3 (a) (3) of the Public Utility Holding Company Act of 1935 ("act"), requesting an order exempting it from all the provisions of the act, on the grounds that Ideal is only incidentally a holding company being primarily engaged or interested in one or more businesses other than the business of a public-utility company and not deriving, directly or indirectly, any material part of its income from any one or more subsidiary companies, the principal business of which is that of a public-utility company.

The amended application which is on file in the offices of the Commission may be summarized as follows:

Ideal is engaged in the manufacture and sale of cement. In addition to its direct operations, Ideal has six wholly-owned subsidiaries which are engaged in various businesses other than the manufacture of cement, and do a total volume of business which is insignificant in relation to the total volume of business done directly by Ideal. As at December 31, 1957, the consolidated assets of Ideal and its subsidiaries totaled \$119,494,043 and for the year 1957 the consolidated net sales and other operating income totaled \$79,019,106.

One of the subsidiary companies, Louisiana-Nevada Transit Company ("Transit Company") purchases and produces natural gas and transmits such gas from fields in northern Louisiana into southwestern Arkansas. As at October 31, 1957, the assets of Transit Company totaled \$1,019,311 and for the ten months then ended, gross revenues totaled \$549,392. Transit Company supplies natural gas to one of Ideal's cement plants situated in southwestern Arkansas, and also distributes and sells natural gas to residential, commercial and industrial customers in various communities in Louisiana and Arkansas. Approximately one-half of Transit Company's annual sales of gas are to Ideal for use in the operation of the latter's cement plant in Arkansas.

Another subsidiary company, Boettcher Oil & Gas Company ("Boettcher"), purchases and produces natural gas and transmits such gas to one of Ideal's cement plants in Oklahoma. It also delivers gas to various companies for resale and to various contractors for use in drilling wells. As at December 31, 1957, total assets of Boettcher were \$443,581 and for the year 1957 its sales and other income totaled \$574,518.

The amended application states that Transit Company and Boettcher are the only subsidiaries of Ideal which are "public-utility companies" as defined in the act.

Notice is further given that any interested person may, not later than May 14, 1958, at 5:30 p. m., request the Commission in writing that a hearing be held on such matter stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said amended application which he desires to controvert, or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington 25, D. C. At any time after said date, said amended application, as filed or as further amended, may be granted, or the Commission may take such other action as it may deem appropriate under the circumstances.

By the Commission.

[SEAL]

ORVAL L. DuBOIS,
Secretary.

[F. R. Doc. 58-3116; Filed, Apr. 25, 1958;
8:49 a. m.]

[File No. 1-699]

THE FAIR

NOTICE OF APPLICATION TO STRIKE FROM LISTING AND REGISTRATION, AND OF OPPORTUNITY FOR HEARING

APRIL 22, 1958.

In the matter of The Fair Common Stock; File No. 1-699.

Midwest Stock Exchange has made application, pursuant to section 12 (d) of the Securities Exchange Act of 1934 and Rule X-12D2-1 (b) promulgated thereunder, to strike the above named security from listing and registration thereon.

The reasons alleged in the application for striking this security from listing and registration include the following:

Of the 372,100 presently listed shares, 368,345 have been acquired by Montgomery Ward & Company, leaving only 3,755 shares outstanding in the names of 245 persons. A similar delisting application by the New York Stock Exchange was granted by the Commission on March 18, 1958.

Upon receipt of a request, on or before May 7, 1958, from any interested person for a hearing in regard to terms to be imposed upon the delisting of this security, the Commission will determine whether to set the matter down for hearing. Such request should state briefly the nature of the interest of the person requesting the hearing and the position he proposes to take at the hearing with respect to imposition of terms. In addition, any interested person may submit his views or any additional facts bearing on this application by means of a letter addressed to the Secretary of the Securities and Exchange Commission, Washington 25, D. C. If no one requests a hearing on this matter, this application will be determined by order of the Commission on the basis of the facts stated in the application and other information contained in the official file of the Commission pertaining to the matter.

By the Commission.

[SEAL]

ORVAL L. DuBois,
Secretary.

[F. R. Doc. 58-3117; Filed, Apr. 25, 1958;
8:49 a. m.]

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

STATEMENT OF ORGANIZATION OF THE IMMIGRATION AND NATURALIZATION SERVICE

PORTS OF ENTRY

Effective upon publication in the FEDERAL REGISTER, the following amendments to the Statement of Organization of the Immigration and Naturalization Service (19 F. R. 8071, December 8, 1954), as amended, are prescribed:

Subparagraph (2) *Ports of entry for aliens arriving by vessel or by land transportation* of paragraph (c) *Suboffices* of section 1.51 *Field Service* is amended in the following respects:

1. The list of Class A ports of entry in District No. 8—Detroit, Mich., is amended by adding the following ports of entry in alphabetical sequence:

Ecorse, Mich. (May 15-Oct. 15).
Gibraltar, Mich. (May 15-Oct. 15).
Keans Detroit Yacht Harbor, Detroit, Mich. (May 15-Oct. 15).
St. Clair Shores, Mich. (May 15-Oct. 15).

2. The list of Class B ports of entry in District No. 10—St. Paul, Minn., is amended by deleting "Gunflint Lake, Minn."

3. The list of Class B ports of entry in District No. 15—El Paso, Tex., is amended by adding the following port of entry in alphabetical sequence:

San Vicente, Tex.

Dated: April 23, 1958.

J. M. SWING,
Commissioner of
Immigration and Naturalization.

[F. R. Doc. 58-3136; Filed, Apr. 25, 1958;
8:54 a. m.]

Office of Alien Property

AUGUSTINIUS I. M. BUSCH

NOTICE OF INTENTION TO RETURN VESTED PROPERTY

Pursuant to section 32 (f) of the Trading With the Enemy Act, as amended,

notice is hereby given of intention to return, on or after 30 days from the date of publication hereof, the following property, subject to any increase or decrease resulting from the administration thereof prior to return, and after adequate provision for taxes and conservatory expenses:

Claimant, Claim No., Property and Location

Augustinius I. M. Busch, Dorpsstraat A290, Wervershoof, The Netherlands; Claim No. 80646; Vesting Order No. 17915; \$135.02 in the Treasury of the United States.

Executed at Washington, D. C., on April 21, 1958.

For the Attorney General.

[SEAL] DALLAS S. TOWNSEND,
Assistant Attorney General,
Director, Office of Alien Property.

[F. R. Doc. 58-3126; Filed, Apr. 25, 1958;
8:51 a. m.]

ELFRIEDA GROEGER

NOTICE OF INTENTION TO RETURN VESTED PROPERTY

Pursuant to section 32 (f) of the Trading With the Enemy Act, as amended, notice is hereby given of intention to return, on or after 30 days from the date of publication hereof, the following property, subject to any increase or decrease resulting from the administration thereof prior to return, and after adequate provision for taxes and conservatory expenses:

Claimant, Claim No., Property, and Location

Elfrieda Groeger, Allerheiligenweg 536, Jettingen, Germany; Claim No. 45758; Vesting Order No. 10869; \$246.35 in the Treasury of the United States.

Executed at Washington, D. C., on April 21, 1958.

For the Attorney General.

[SEAL] DALLAS S. TOWNSEND,
Assistant Attorney General,
Director, Office of Alien Property.

[F. R. Doc. 58-3127; Filed, Apr. 25, 1958;
8:51 a. m.]







